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PART VI—SOUTHERN AND SOUTHWESTERN STATES

REPORT

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COMMISSIONER OF CORPORATIONS

ON THE

SYSTEM OF TAXING MANUFACTURING, MERCANTILE, TRANSPORTATION, AND TRANSMISSION CORPORATIONS IN THE STATES OF VIRGINIA, WEST VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA, FLORIDA, KENTUCKY, TENNESSEE, ALABAMA, MISSISSIPPI, ARKANSAS, LOUISIANA, OKLAHOMA, AND TEXAS

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LETTERS OF TRANSMITTAL.

DEPARTMENT OF COMMERCE,
OFFICE OF THE SECRETARY,
Washington, March 15, 1915.

SIR: I transmit herewith Part VI of a Report of the Commissioner of Corporations on Taxation of Corporations, said part dealing with the systems of corporate taxation in Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas.

Very respectfully,

WILLIAM C. REDFIELD,
Secretary.

The PRESIDENT.

DEPARTMENT OF COMMERCE,
BUREAU OF CORPORATIONS,
Washington, March 15, 1915.

SIR: I have the honor to transmit herewith Part VI of a Report on Taxation of Corporations made to the President under your direction and in accordance with the law creating the Bureau of Corporations. This part deals with the systems of corporate taxation in Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas.

I desire to mention as especially contributing, under my direction, to the preparation of this report, Mr. M. Markham Flannery, of this Bureau.

Very respectfully,

JOSEPH E. DAVIES,
Commissioner of Corporations.

To Hon. WILLIAM C. REDFIELD,
Secretary of Commerce.

LETTER OF SUBMITTAL.

DEPARTMENT OF COMMERCE,
BUREAU OF CORPORATIONS,
Washington, March 15, 1915.

SIR: I have the honor to submit herewith Part VI, the final part of a Report on State Taxation of Manufacturing, Mercantile, Transportation, and Transmission Corporations. This part deals with the Southern and Southwestern States, namely, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas.

The six parts of this report are presented in substantial uniformity of arrangement, so as to afford a ready comparison of the information relative to each State or subject with that pertaining to any other State or subject.

The total taxes collected annually for purely state purposes is roughly estimated at $300,000,000. This estimate does not include vast amounts paid for county, municipal, or other local purposes. Of the taxes paid for purely state purposes, certain classes of corporations, including, especially, railroad, banking, and insurance companies, contribute about $120,000,000, or 40 per cent. Other important classes of corporations, such as manufacturing, mercantile, and miscellaneous companies, also pay a large amount of state taxes, but these are almost invariably collected by local authorities and transmitted in common with other taxes to the state treasury. The amounts paid by corporations and transmitted to the state treasury in this manner are not separately reported and are practically unobtainable.

Of the $120,000,000 estimated as paid by certain classes of corporations, railroads pay about 44 per cent, insurance and financial companies about 23 per cent, and all other classes about 33 per cent.

The methods of taxing individuals are practically the same throughout the 48 States. The methods of taxing corporations differ with each State and with various classes of corporations in

most States. The problems in the taxation of corporations are much more intricate than in the taxation of individuals. Besides the corporations, two classes of persons are affected by corporation taxes, namely, the individual stockholders and the bondholders and other creditors of the corporation. Again, where a corporation has property in different States deriving its value chiefly from the operation of its business as a whole, the situs for taxation purposes presents a difficult problem, which is further involved by the fact that the stockholders reside in various States. In adjusting these, with many other difficult problems, the taxation system must neither conflict with the exclusive power of the Federal Government to regulate commerce nor transgress the inhibition of the fourteenth amendment guaranteeing equal protection of the laws.

A striking example of one phase of the variations in systems of corporate taxation which have been made with a view to expediency rather than to avoid problems of the nature above noted is found in the application of the capital-stock taxes. Twenty-six States tax one or more classes of corporations on capital stock, with method, base, and rate varying from the exceedingly complex system employed by New York to the simple plan of exacting a specified sum for a given amount of authorized capital stock, as in Idaho.

One very fundamental difference between the taxation of individuals and of corporations is found in taxing corporations not only on the value of their physical property, but also on that value which is created by reason of the successful business operation. An individual, however, who attains business success is not taxed on his good will. When corporations are taxed in this manner it is generally regarded as a tax on franchise, namely, a tax on the right to exist as a corporation. The franchise or right to use public streets or roads is also taxed, but this kind of franchise commonly is taxable to individuals and to corporations alike. One or two States, however, have attempted to apply taxes intended to reach a value possessed by individuals which corresponds in some degree to the franchise value first mentioned, but these taxes have proved unworkable. Another difference of importance is the taxation of corporations for the privilege of doing business in States other than that of domicile; taxes for such a purpose are not applicable to individuals. These important distinctions in taxation are based on the differences

existing between the constitutional rights of individuals and corporations.

The lack of uniformity in the method of taxing corporations as between States and between classes of corporations in the same State has been emphasized in the introductions to the several parts of this report, wherein tables have been introduced to bring together in classified form the different kinds of taxes to which corporations are subject.

Several States have sought to supply all or practically all State tax revenue from certain classes of corporations. Individuals pay no taxes on property for State purposes in New Jersey or Delaware. Ordinarily they pay comparatively little in Vermont, Connecticut, New York, Pennsylvania, and California. Certain revenue, however, such as from the mortgage-recording tax in New York, the coal tax in Pennsylvania, etc., is divided between the State and the local governments or taxing districts. In Connecticut, New York, and California the general property tax to which individuals are subject is levied for State purposes when emergencies demand it.

In each of the 48 States the more important classes of transportation and transmission corporations are assessed by State officials. The scope of authority granted, however, in some States is very limited, in others it covers a highly centralized system of administering all tax laws. The various kinds of State centralized assessing authority and their respective jurisdictions in the assessment of corporations are shown in tabular form for each of the 48 States.

A noteworthy feature of the tax systems of the Southern and Southwestern States is the elaborate system of license or occupation taxes levied in most States on corporations and individuals alike. Such taxes cover all lines of business. The rates are usually graduated, but sometimes they are fixed, and the measure varies from the amount of capital invested in mercantile companies to the number of chairs in shoe-shining establishments.

Peculiar to this group is the assessment of physical property and of franchise value of the same corporations by separate boards. Kentucky, Alabama, and Texas are burdened with such systems. New York, however, also assesses in this way a different and special kind of franchise, namely, the right to use public streets, roads, etc.

Another noteworthy feature of this group of States is the almost total absence of State boards selected solely for the purpose of administering the tax laws. Two States only, Alabama and Arkansas, have such boards. In all others, except Louisiana and Texas, they are composed of officials selected primarily for the purpose of performing other duties and are required to act ex officio in matters of assessment for taxation. In Louisiana and Texas they are composed partly of ex officio and partly of selected members.

West Virginia, Georgia, and Texas each has a selected official, and Florida has a selected board of officials appointed solely for the purpose of performing certain important duties with respect to taxation, but none of them has original assessing power.

In this, as in the other groups of States, there is a great lack of uniformity in the kinds of taxes, in the methods of assessment, in the system of collection, in the manner of selecting administrative boards or officials, and in the degrees of authority granted them.

Very respectfully,

JOSEPH E. DAVIES,
Commissioner of Corporations.

The PRESIDENT.

TAXATION OF CORPORATIONS IN THE SOUTHERN AND SOUTHWESTERN STATES.

INTRODUCTION.

Purpose and Plan.

This part, dealing with the taxation of corporations in the Southern and Southwestern States as of January 1, 1915, is the final part of a series covering the 48 States and the District of Columbia.

The purpose of this part, like that of the preceding parts of the report, is to describe the methods employed by each State of the group in taxing manufacturing, mercantile, transportation, and transmission corporations and such securities as those corporations may issue.

The plan of this, as of each other part of the series, is to describe the system of each State in taxing the classes of corporations covered by first giving a brief general view. This is followed by a statement of the constitutional provisions relating particularly to taxation. Next is given a digest of the statutes as interpreted by judicial decisions and as administered by state tax officials. This is followed by a statement of financial results of the tax system in so far as they relate to the revenue for state purposes. The digest of each State is concluded with certain comments on the more important changes in the tax laws which took place prior to the inauguration of the present system, recommendations with respect to suggested changes based on reports and on oral statements of tax officials, and some comparisons of the different systems.

Revenue from Corporations.

In introductions to previous parts of this report summaries were given of the statements regarding the financial results of the several States. Table A, below, gives by groups of States the totals of such summaries for the 48 States and the District of Columbia, and also the summaries by States for the Southern and Southwestern group. What has been said in introductions to previously

published parts with respect to the difficulty of presenting accurate financial data is repeated here, namely, that amounts appearing in the first column of the table are somewhat less than actual collections from corporations because there are no adequate data as to the amounts received by the States from the local collection of the general property or other taxes, so far as such collections apply to corporations. In all of the 48 States in which it was possible to determine definitely the total amount of the state, as distinguished from local taxes, the ratio of taxes from all corporations to all sources of state income from taxation exceeded 50 per cent, and probably it is not much less than that in any of the 48 States.

TABLE A.—TOTAL STATE TAXES, AS DISTINGUISHED FROM LOCAL TAXES, WITH AMOUNTS AND PERCENTAGES, CONTRIBUTED BY CERTAIN SPECIFIED SOURCES OF TAXATION, FOR 1912; SHOWING TOTALS, BY GROUPS, FOR THE 48 STATES AND THE DISTRICT OF COLUMBIA, AND TOTALS BY STATES FOR THE SOUTHERN AND SOUTHWESTERN GROUP.

[This table relates only to state revenue from taxation.]

Group.	Taxes paid by corporations.	General property tax.[a]	Inheritance tax.	Liquor tax.	Miscellaneous tax receipts.	Total state taxes.
New England Group	$14,501,984	$9,824,647	$3,778,908	$1,068,826	$1,194,210	$30,368,575
Middle Atlantic Group	41,309,836	14,670,201	15,412,104	12,120,935	12,169,640	95,682,716
Eastern Central Group	22,173,824	23,438,904	3,075,772	2,600,746	1,901,078	53,190,324
Western Central Group	9,215,340	14,962,635	1,689,432	1,610,586	979,201	28,457,194
Mountain and Pacific Group	16,640,718	10,611,687	1,807,429	315,073	3,285,132	32,660,039
Southern and Southwestern Group	16,066,585	30,964,772	766,920	3,466,454	7,975,387	59,240,118
Total for United States	119,908,287	104,472,846	26,530,565	21,182,620	27,504,648	299,598,966
States in Southern and Southwestern Group:						
Virginia	[b] 1,956,619	2,197,558	43,763	513,406	1,715,630	6,426,976
West Virginia	[b] 665,928	210,495	168,233	634,323	407,909	2,086,889
North Carolina	[b] 970,141	1,353,305	5,265	.....	420,074	2,748,785
South Carolina	[b] 1,136,640	1,055,803	.....	48,568	47,288	2,288,299
Georgia	[b] 1,174,697	3,119,352	.....	281,520	695,254	5,270,824
Florida	[b] 528,091	1,149,520	.....	.....	706,425	2,384,036
Kentucky	1,079,270	4,087,378	101,577	567,209	371,568	6,207,002
Tennessee	1,050,155	1,713,122	164,962	344,546	479,550	3,752,335
Alabama	[b] 1,404,692	2,487,820	.....	127,717	510,140	4,530,369
Mississippi	583,809	2,027,660	.....	.....	508,677	3,120,146
Arkansas	[b] 856,058	1,846,332	23,664	87,134	25,974	2,839,162
Louisiana	[b] 712,104	2,192,490	207,004	.....	970,603	4,082,201
Oklahoma	[b] 1,181,409	1,561,856	4,873	.....	55,572	2,803,709
Texas	[b] 2,766,972	5,962,081	47,579	862,031	1,060,723	10,699,386
Total for Southern and Southwestern Group	16,066,585	30,964,772	766,920	3,466,454	7,975,387	59,240,118

[a] Excluding estimated taxes paid by certain corporations.

[b] Includes estimate of State's share of general property tax collected locally from all corporations for which assessments are available.

TABLE A.—TOTAL STATE TAXES, AS DISTINGUISHED FROM LOCAL TAXES, WITH AMOUNTS AND PERCENTAGES, CONTRIBUTED BY CERTAIN SPECIFIED SOURCES OF TAXATION, FOR 1912, SHOWING TOTALS, BY GROUPS, FOR THE 48 STATES AND THE DISTRICT OF COLUMBIA, AND TOTALS BY STATES FOR THE SOUTHERN AND SOUTHWESTERN GROUP—Continued.

PER CENT OF TOTAL STATE TAXES.

Group.	Taxes paid by corporations.	General property tax.[a]	Inheritance tax.	Liquor tax.	Miscellaneous tax receipts.	Total state taxes.
New England Group	48	32	12	4	4	100
Middle Atlantic Group	43	15	16	13	13	100
Eastern Central Group	42	44	6	5	3	100
Western Central Group	32	53	6	6	3	100
Mountain and Pacific Group	51	32	6	1	10	100
Southern and Southwestern Group	27	52	1	6	13	100
Total for United States	40	35	9	7	9	100
States in Southern and Southwestern Group:						
Virginia	30	34	1	8	27	100
West Virginia	32	10	8	30	20	100
North Carolina	36	49	(a)	.....	15	100
South Carolina	50	46	.....	2	2	100
Georgia	22	59	.....	6	13	100
Florida	22	48	.....	.....	30	100
Kentucky	17	66	2	9	6	100
Tennessee	28	46	4	9	13	100
Alabama	31	55	.....	3	11	100
Mississippi	19	65	.....	.....	16	100
Arkansas	30	65	1	3	1	100
Louisiana	17	54	5	.....	24	100
Oklahoma	42	56	(a)	.....	2	100
Texas	26	56	(a)	8	10	100
Total for Southern and Southwestern Group	27	52	1	6	14	100

[a] Less than one-half of 1 per cent.

Table B shows the state revenue derived from the taxation of corporations, classified according to the kinds of corporations. It includes in such revenue the estimated amounts derived from the general property tax where adequate data are available. In certain cases, particularly for mercantile, manufacturing, and miscellaneous corporations, data are not available as to the amount of taxes paid for state purposes, and the absence of amounts and percentages in the table does not indicate that no revenue was derived from them. If these amounts were available, the percentages, which are based on the amounts ascertainable, would be correspondingly affected.

TABLE B.—SHOWING TOTALS, BY GROUPS, FOR THE 48 STATES AND THE DISTRICT OF COLUMBIA, AND TOTALS BY STATES FOR THE SOUTHERN AND SOUTHWESTERN GROUP, STATE TAXES, AS DISTINGUISHED FROM LOCAL TAXES, WITH AMOUNTS AND PERCENTAGES, CONTRIBUTED BY CERTAIN CLASSES OF CORPORATIONS DURING 1912.

[The absence of amounts and percentages in any column does not necessarily indicate that no taxes are paid for state purposes by the classes of corporations named at the head of such column, because it is frequently impossible to separate such payments from amounts appearing under the heading "Miscellaneous companies."]

Group.	Railroad companies.	Car companies.	Express companies.	Telegraph and telephone companies.	Manufacturing companies.	Insurance companies.	Financial companies.	Miscellaneous companies.[a]	Corporation fees.	Total taxes and fees from corporations.
New England Group	$3,890,373	$4,988	$57,906	$1,110,694	$755,954	$2,701,634	$4,324,701	$1,215,563	$440,171	$14,501,984
Middle Atlantic Group	15,963,166	33,760	112,006	1,222,495	1,916,425	4,509,621	1,872,526	14,169,961	1,509,876	41,309,836
Eastern Central Group	13,015,232	129,290	94,120	788,358	.....	3,882,215	279,628	2,800,237	1,184,744	22,173,824
Western Central Group	5,427,534	68,717	101,367	281,143	.....	2,058,135	500,877	260,444	517,123	9,215,340
Mountain and Pacific Group	7,531,130	115,047	138,244	558,292	.....	1,659,975	1,709,581	4,558,681	369,768	16,640,718
Southern and Southwestern Group	6,548,960	81,032	153,213	436,317	555,774	3,347,133	1,324,191	2,830,640	789,325	16,066,585
Total for United States	52,376,395	432,834	656,856	4,397,299	3,228,153	18,158,713	10,011,504	25,835,526	4,811,007	119,908,287
States in Southern and Southwestern Group:										
Virginia	969,936	5,434	27,035	54,007	.....	281,667	166,147	398,600	53,793	1,956,619
West Virginia	46,837	216	151	1,155	.....	145,397	8,228	463,944	.....	665,928
North Carolina	301,931	1,117	6,450	26,871	74,638	303,081	49,217	172,806	34,030	970,141
South Carolina	280,757	1,066	2,163	13,094	444,430	176,835	148,209	69,696	390	1,136,640
Georgia	628,006	3,840	6,096	39,410	.....	214,875	184,179	98,291	.....	1,174,697
Florida	260,885	2,040	3,750	5,159	.....	186,758	4,970	.....	64,529	528,091
Kentucky	338,913	.....	.....	.....	.....	362,341	147,380	91,664	138,972	1,079,270
Tennessee	333,841	3,000	7,500	22,067	.....	503,532	7,366	99,376	73,473	1,050,155
Alabama	[b] 647,825	5,500	9,907	58,655	.....	252,654	98,409	246,083	85,659	1,404,692
Mississippi	356,496	2,011	11,442	14,765	.....	181,070	.....	.....	18,025	583,809
Arkansas	563,944	7,837	5,772	23,609	.....	83,991	52,306	78,322	40,277	856,058
Louisiana	305,563	2,118	2,153	25,056	36,706	16,940	117,736	180,025	25,807	712,104
Oklahoma	439,956	1,611	6,703	16,324	.....	228,010	56,568	360,875	71,362	1,181,409
Texas	1,074,070	45,242	64,091	136,145	.....	409,982	283,476	570,958	183,008	2,766,972
Total for Southern and Southwestern Group	6,548,960	81,032	153,213	436,317	555,774	3,347,133	1,324,191	2,830,640	789,325	16,066,585

PER CENT OF TOTAL STATE CORPORATION TAXES.

New England Group	27	(c)	(c)	8	5	19	30	8	3	100
Middle Atlantic Group	39	(c)	(c)	3	5	11	4	34	4	100
Eastern Central Group	59	1	(c)	4	.....	17	1	13	5	100
Western Central Group	59	1	1	3	.....	22	5	3	6	100
Mountain and Pacific Group	45	1	1	3	.....	10	10	28	2	100
Southern and Southwestern Group	41	1	1	3	3	21	8	17	5	100
Total for United States	44	(c)	1	4	3	15	8	21	4	100
States in Southern and Southwestern Group:										
Virginia	50	(c)	1	3	.....	14	9	20	3	100
West Virginia	7	(c)	(c)	(c)	.....	22	1	70	.....	100
North Carolina	31	(c)	1	3	8	31	5	18	3	100
South Carolina	25	(c)	(c)	1	39	16	13	6	(c)	100
Georgia	54	(c)	1	3	.....	18	16	8	.....	100
Florida	50	(c)	1	1	.....	35	1	.....	12	100
Kentucky	31	.....	.....	.....	.....	34	14	8	13	100
Tennessee	32	(c)	1	2	.....	48	1	9	7	100
Alabama	46	(c)	1	4	.....	18	7	18	6	100
Mississippi	61	(c)	2	3	.....	31	.....	.....	3	100
Arkansas	66	1	1	3	.....	10	6	9	4	100
Louisiana	43	(c)	(c)	4	5	2	17	25	4	100
Oklahoma	37	(c)	1	1	.....	19	5	31	6	100
Texas	39	2	2	5	.....	15	10	21	6	100
Total for Southern and Southwestern Group	41	(c)	1	3	3	21	8	18	5	100

[a] The amounts paid by miscellaneous companies include amounts paid by manufacturing and mercantile companies which are not shown separately. These amounts are probably fully twice as large as those specifically reported as paid by manufacturing and mercantile companies.

[b] Includes general property tax estimated to have been paid by corporations.

[c] Less than one-half of 1 per cent.

Classification of Tax Systems.

The chief reliance for revenue from taxation for local purposes in each of the 48 States is the general property tax, namely, a tax applicable to the general mass of property levied at different rates for municipal, school, county, and usually for state purposes. In each State it applies to individuals. In some, it is the only tax applicable to corporations; in others it is supplemented with respect to corporations by special taxes; and in still others it is replaced for state purposes by special taxes on certain classes of corporations.

Anything more than a rough classification of the tax systems of the 48 States is practically impossible, as classification strictly according to the kinds of taxes levied, the administrative enforcement thereof, and the financial results obtained would require almost as many classes as there are States; therefore, the classification adopted and shown in Table C is based on the kinds of taxes paid for state purposes by (a) steam, street, and electric railroads, (b) car companies, (c) express companies, (d) telegraph companies, (e) telephone companies, and (f) manufacturing, mining, and mercantile companies.

As shown under the first division of Table C the only States which now apply the general property tax exclusively to the six classes of corporations above mentioned and at the same rates applicable to individuals are Illinois,[a] South Dakota, Nevada, and New Mexico. Four other States shown under this division have the same system with the following unimportant exceptions: Car companies are taxed on the value of property in Indiana at a fixed rate (except sleeping-car companies), and in Iowa at an average rate; express companies in Wyoming and car companies in North Dakota are taxed on gross receipts.

In the 25 States shown under the second division of Table C, the general property tax is applied at like rates to individuals and to corporations, and in addition one or more of the six classes are taxed by special methods, such as the capital-stock tax, the gross-receipts tax, etc. In the 11 States last named under this division the general property tax is in unimportant instances replaced as to certain classes of corporations.

In the 15 States shown in the third division of Table C special methods of taxing corporations for state purposes predominate;

[a] By special charter provision the Illinois Central R. R. pays a gross-receipts tax.

that is, the revenue from taxation for state purposes is derived largely or wholly by methods other than the general property tax method. The first 7 States named under this division have adopted the separation method and under ordinary conditions do not apply the general property tax for state purposes.

Complete data with respect to the financial yield from the taxes shown in Table C were not readily obtainable, but such as appear may assist in approximating the relative importance of various forms of special taxes, or rather the extent to which particular systems depend on special taxation of corporations for state purposes. Nothing more than an approximation is attempted because scientific comparisons of the effectiveness of the various kinds of taxes depend not alone upon the differences in financial yield, but rather upon the essential factors which cause them, such as the different degrees of economic development attained by the States, the diverse purposes for which the particular kinds of taxes are levied, the difference between classes of corporations to which they are applied, the various kinds and sizes of rates used, and the differences in administrative efficiency.

TABLE C.—SYSTEMS OF TAXING SIX CLASSES OF CORPORATIONS FOR STATE PURPOSES, NAMELY: (A) STEAM, STREET, AND ELECTRIC RAILROAD; (B) CAR; (C) EXPRESS; (D) TELEGRAPH; (E) TELEPHONE; AND (F) MERCANTILE, MANUFACTURING, AND MINING COMPANIES, BY STATES, FOR 1912.

State.	Classes of corporations on which general property tax is applied for state purposes.	General property tax for state purposes replaced on certain classes of corporations.		General property tax for state purposes supplemented on certain classes of corporations.		Rate.*	Amount.
		Classes of corporations.	Kind of tax.	Classes of corporations.	Kind of tax.		
I. TAXATION BY GENERAL PROPERTY TAX ONLY, WITH CERTAIN MINOR EXCEPTIONS.							
New Mexico	Six classes					1.0	[a] $165,341
Nevada	Six classes					0.6	[b] 315,094
South Dakota	Six classes					0.4	[c] 136,766
Illinois	Six classes [d]					0.35	[e] 718,626
Indiana	Five classes (and sleeping car).					0.3185	[c] 804,131
		Freight car	Property			1.0	11,179
Iowa	Five classes					0.39	[c] 280,191
		Freight car	Property [f]			4.61	8,243
North Dakota	Five classes					0.44	[c] 190,387
		Freight car	Gross receipts			4.0	1,767
Wyoming	Five classes					0.308	[g] 175,446
		Express	Gross receipts			2.5	1,553
II. GENERAL PROPERTY TAX SUPPLEMENTED BY OTHER TAXES.[h]							
Kentucky	Six classes					0.5	[i] 565,600
				Mfg., Mer., & Misc.	Capital stock	0.03	85,847
Utah	Six classes					0.75	[g] 340,120
				Five classes [j]	Capital stock	$5–$50	[k] 70,865
Georgia	Six classes					0.5	[c] 677,353
				Six classes	Capital stock	$10–$200	[k] 46,917

Oregon	Six classes					0.344	[c] 351,931
				Six classes	Capital stock	$10–$200	[f] 171,483
Colorado	Six classes					0.41	[g] 329,145
				Six classes	Capital stock	0.002	[l] 53,079
Idaho	Six classes					0.3	[g] 244,110
				Six classes	Capital stock	$10–$150	[l] 66,083
Nebraska	Six classes					0.62	[c] 352,926
				Six classes	Capital stock	$5–$200	[m] 63,121
Louisiana	Six classes					0.545	[g] 422,464
				Exp., Telg., Telph., Mer., & Mfg.	Gross receipts	Various.	
				Mining, Oil, & Gas	Production	0.5	
South Carolina	Six classes					0.575	[n] 447,403
				Five classes of Pub. Serv.	Gross receipts	0.3	32,354
				Mfg., Mer., & Min.	Capital stock	0.05	[o] 81,803
West Virginia	Six classes					0.025	[c] 48,358
				Exp., Telg., & Telph. (foreign).	Mileage	$1–$1.50	5,691
				Six classes, except above foreign.	Capital stock	Graduated.	[k] 419,501
Oklahoma	Six classes					0.225	[g] 479,700
				Mfg. & Mer.	Capital stock	0.05	50,488
				Telg. & Telph. (intrastate)	Gross receipts	0.5–2	1,792
				Mining & Oil	Production	0.5	130,613
Montana	Six classes					0.275	[g] 245,140
				R. R. & Express	Gross receipts	Grad.	4,315
				Telegraph	Instrument	$10	
				Telephone	Lump sum	Grad.	
Florida	Six classes					0.75	[p] 240,284
				R. R. & Telg.	Mileage	$5–$0.25	27,801
				Sleeping Car & Exp.	Gross receipts	1.5–1	[q] 3,750
				Telephone	Instrument	$0.12½	

For footnotes see p. 15.

* The rates in this column are expressed in percentages unless otherwise shown. No local rates are included in this column.

TABLE C.—SYSTEMS OF TAXING SIX CLASSES OF CORPORATIONS FOR STATE PURPOSES, NAMELY; (A) STEAM, STREET, AND ELECTRIC RAILROAD; (B) CAR; (C) EXPRESS; (D) TELEGRAPH; (E) TELEPHONE; AND (F) MERCANTILE, MANUFACTURING, AND MINING COMPANIES, BY STATES, FOR 1912—Continued.

State.	Classes of corporations on which general property tax is applied for state purposes.	General property tax for state purposes replaced on certain classes of corporations.		General property tax for state purposes supplemented on certain classes of corporations.		Rate.	Amount.
		Classes of corporations.	Kind of tax.	Classes of corporations.	Kind of tax.		
II. GENERAL PROPERTY TAX SUPPLEMENTED BY OTHER TAXES—continued.							
North Carolina	Six classes					0.25	483,745
				Railroad	Mileage	$2–$5	17,568
				Car & Business	Capital stock	$5–$500	51,585
				Exp., Telg. & Telph	Gross receipts	3–2.5	24,336
Missouri	Five classes (and sleeping car).					0.19	[r] 338,660
		Freight car	Property [f]				8,976
				Express	Gross receipts	1.25	19,473
Kansas	Five classes					0.12	[e] 477,569
		Car	Property [f]			0.89+	31,849
				Express	Gross receipts	4.0	12,027
Arkansas	Five classes (and sleeping car).					0.675	[c] 566,103
		Freight car	Gross receipts			5.0	
				Six classes	Capital stock	0.05	[l] 113,459
Alabama	Five classes					0.65	[c] 701,952
		Sleeping car	Lump sum				5,500
				R. R., Mfg., Mer. & Min	Capital stock	0.01–.1	[s] 119,281
				Exp., Telg., & Telph	Mileage	Grad.	16,361
Ohio	Five classes					0.0451	[c] 345,228
		Car	Property			1.2	56,994
				Mfg., Min., & Mer	Capital stock	0.15	[s] 2,014,511
				R. R., Exp., Telg., & Telph.	Gross receipts	1.2–4	2,379,300

Maryland	Five classes					0.2325	[u] 128,994
		Sleeping car	Gross receipts			2.5	1,598
				R. R., Exp., Telg., & Telph.	Gross receipts	1.25–2.5	665,965
				Mfg., Mer., & Misc. (foreign).	Capital stock	Grad.	25,798
Washington	Five classes						[c] 846,774
		Freight car	Gross receipts			7.0	3,888
				Express	Gross receipts	5.0	[v] 6,370
				Six classes	Corporation	$15	158,152
Tennessee	Five classes					0.35	[r] 352,739
		Sleeping car	Lump sum				3,000
				Six classes	Capital stock	$5–$150	[k] 88,453
				Elec. R. R., Exp., & Telg.	Mileage	Grad.	10,670
				Telephone	Instrument		
Texas	Five classes					0.2916+	[r] 1,049,363
		Car	Gross receipts			3–5	40,119
				Car (sleeping)	Capital stock	0.25	5,123
				All, except Car & Exp	Capital stock	0.025–0.05	[t] 494,397
				Elec. Ry., Exp., Telg., & Telph.	Gross receipts	Various.	262,905
				Street Railway	Mileage	$2	535
				Oil Well	Production	0.5	20,708
Mississippi	Five classes (and sleeping car).					0.6	[c] 300,156
		Freight car	Gross receipts			3.0	118
				R. R., Slp. Car, Exp., Telg., & Telph.	Mileage	Various.	84,558
Virginia	Five classes					0.35	[w] 553,093
		Sleeping car	Mileage			$2	5,434
				Exp. & Telph	Mileage	Various.	60,674
				Six classes	Registration (capital stock).	$5–$25	[k] 64,152
				Telph., Mfg., Mer., & Min. (domestic).	Capital stock	Grad.	[x] 136,110
				R. R. & Telg	Gross receipts	1–2	567,369
		Mercantile (personalty)	Purchases			Grad.	

For footnotes see p. 15.

TABLE C.—SYSTEMS OF TAXING SIX CLASSES OF CORPORATIONS FOR STATE PURPOSES, NAMELY: (A) STEAM, STREET, AND ELECTRIC RAILROAD; (B) CAR; (C) EXPRESS; (D) TELEGRAPH; (E) TELEPHONE; AND (F) MERCANTILE, MANUFACTURING, AND MINING COMPANIES, BY STATES, FOR 1912—Continued.

State.	Classes of corporations on which general property tax is applied for state purposes.	General property tax for state purposes replaced on certain classes of corporations.		General property tax for state purposes supplemented on certain classes of corporations.		Rate.	Amount.
		Classes of corporations.	Kind of tax.	Classes of corporations.	Kind of tax.		
III. GENERAL PROPERTY TAX GENERALLY REPLACED BY OTHER TAXES.[7]							
Connecticut		Railroad	Value stock and bonded debt.			1.0	1,658,593
		Express	Gross receipts			5.0	19,405
		Telg. & Telph	Mileage and transmitter.			Various.	117,171
New Jersey		Railroad (steam)	Property [f]			1.896	4,381,641
		Sleeping Car & Exp	Gross receipts			2.0	4,117
		Mer. & certain Mfg. & Min. (dom.).	Capital stock			Grad.	[g] 2,604,881
Delaware		R. R. (steam) & Car (sleeping).	Commutation				112,300
		Express	Gross receipts			6%+$250	2,965
		Telg. & Telph	Mileage and instrument.			Various.	12,294
		Manufacturing	Property			0.05%+$5	19,309
		Mercantile	Purchases			0.1%+$5	
		Nonresident domestic	Capital stock			Grad.	62,551
Vermont		R. R., Frt. Car, Telg., & Telph.	Gross receipts			Various.	[g] 339,376
		Car (sleeping)	Property			0.7	1,400

		Express	Mileage			$8	7,419
		Six classes	Capital stock			$5—$50	[k] 29,843
Pennsylvania		Six classes	Capital stock			0.5	11,108,017
		All, except Car	Corporate loan			0.4	[m] 2,103,689
		All, except Mfg. & Mis. business.	Gross receipts			0.8	1,444,281
New York	Six classes					0.06	[a] 445,480
				All, except Mfg	Capital stock	Grad.	2,846,851
				All, except Mfg., Mer., & Min.	Gross receipts	Various.	[aa] 2,504,667
California	Six classes (P. P. Exp'n).					0.05	[bb] 70,583
		R. R. Car, Exp., Telg., & Telph.	Gross receipts			Various.	5,384,598
		Mfg., Mer., Min., Oil, & Nonop. Pub. Serv.	Franchise			1% value.	1,498,360
				Six classes	Capital stock	$10—$250	[cc] 802,012
Michigan		All, excepting Mfg., Min., & Mer.	Property *f*			2.05	4,765,099
	Mfg. & Mer						(*g*)
	Mining					0.285	386,367
New Hampshire		All, excepting Mfg., Min., & Mer.	Property *f*			2.101	478,565
	Mfg., Min., & Merc						(*c*)
Wisconsin		First four classes	Property *f*			1.1+	3,723,737
		Telephone	Gross receipts			2.5—5	77,930
	Mfg., Min., & Mer						(*c*)
Massachusetts	All, except car, (real estate and machinery).						
		Pub. Serv. & Dom. Bus	Corporate excess *f*			1.797	2,244,014
	Foreign Bus. (tangible Prop.).						
				Foreign Bus. & Sleeping Car	Capital stock	[dd] 0.02	257,581

For footnotes see page 15.

TABLE C.—SYSTEMS OF TAXING SIX CLASSES OF CORPORATIONS FOR STATE PURPOSES, NAMELY: (A) STEAM, STREET, AND ELECTRIC RAILROAD; (B) CAR; (C) EXPRESS; (D) TELEGRAPH; (E) TELEPHONE; AND (F) MERCANTILE, MANUFACTURING, AND MINING COMPANIES, BY STATES, FOR 1912—Continued.

State.	Classes of corporations on which general property tax is applied for state purposes.	General property tax for state purposes replaced on certain classes of corporations.		General property tax for state purposes supplemented on certain classes of corporations.		Rate.	Amount.
		Classes of corporations.	Kind of tax.	Classes of corporations.	Kind of tax.		
Rhode Island	Steam R. R. & Mfg., Mer., & Misc. Bus.					0.09	[ee] 112,578
		Mfg., Mer., & Misc. business.	Corporate excess			0.4	534,825
		R. R.; Slp. Car, Exp., Telg., & Telph.	Gross receipts			Various.	254,154
Minnesota		R. R., Frt. Car, Exp., & Telph.	Gross receipts			Various.	3,973,203
		Slp. Car & Telg	Property [f]				46,724
	Mfg. & Mer					0.388	(g)
	Mining					0.388	901,590
	Street Railways (cars)					0.388	7,762
Maine	R. R., Mfg., Min., & Mer.					0.6	[c] 42,480
		All, except Mfg., Min., & Mer.	Gross receipts			Various.	835,728
				Mfg., Min., & Mer. (domestic)	Capital stock	Grad.	[x] 205,715
Arizona	All, except Exp., Telg., & Telph.					0.9	[g] 346,725
		Exp., Telg., & Telph	Gross receipts			1.0	2,875

[a] Amounts paid by car, express, manufacturing, and mercantile companies can not be estimated, and are not included.

[b] Amounts paid by telephone, manufacturing, and mercantile companies can not be estimated, and are not included.

[c] Amounts paid by manufacturing, mining, and mercantile companies can not be estimated, and are not included.

[d] The Illinois Central R. R. Co. pays a gross-receipts tax at the rate of 7 per cent as to lines contemplated under its original charter, the tax amounting to $1,180,819 in 1912.

[e] Amounts paid by express, telegraph, telephone, manufacturing, mining, and mercantile companies can not be estimated, and are not included.

[f] Levied at average rate on all other property for state and local purposes.

[g] Amounts paid by manufacturing and mercantile companies can not be estimated, and are not included.

[h] Except for a single unimportant kind of corporation in each of the last 11 States for which the general property tax is replaced by another kind of tax, the general property tax is used as to all six classes and is supplemented by other kinds of taxes.

[i] Amount assessed against steam railroad, sleeping car, express, and telegraph companies. Amount assessed against other companies can not be estimated.

[j] Car companies are not subject to the capital-stock tax.

[k] Includes collections from all corporations for profit.

[l] Includes collections from all corporations for profit, except insurance companies.

[m] Includes collections from all corporations for profit, except insurance and banking companies.

[n] Amounts paid by mercantile companies can not be estimated, and are not included.

[o] Includes collections from banking and business corporations.

[p] Amounts paid by express, telephone, manufacturing, mining, and mercantile companies can not be estimated, and are not included

[q] Sleeping-car company tax in litigation.

[r] Amounts paid by express, manufacturing, mercantile, and mining companies can not be estimated, and are not included.

[s] Includes collections from miscellaneous business companies other than banks.

[t] Includes collections from banking and business corporations.

[u] Taxes paid on real estate of express, manufacturing, mercantile, and miscellaneous companies can not be estimated.

[v] Amount assessed against express companies, $53,574.

[w] Taxes paid on real estate of manufacturing and mercantile companies can not be estimated, and are not included.

[x] Includes collections from miscellaneous business companies other than banks and insurance companies.

[y] This group includes States which have adopted wholly or in large part the separation principle. In two of them (California and New York) the levy of a state tax on these kinds of corporations in 1912 was exceptional. For the last 8 States, certain of these kinds of corporations are still taxed under the general property tax, but the special forms of taxation are generally much more important.

[z] These companies had the option of paying other forms of taxes.

[aa] Includes collections from all public-service corporations.

[bb] The amount paid on the operating property of railroads extending into more than one county and on sleeping-car companies only. The amounts paid by other classes can not be estimated, and are not included.

[cc] Includes collections from all corporations for profit.

[dd] Maximum, $2,000. Banking and insurance companies are not subject to this tax.

[ee] Estimated as the amount paid by manufacturing, mercantile, and miscellaneous business corporations; the amount paid by steam railroad companies can not be estimated.

Capital Stock Method.

The capital stock tax method is used in 26 States. It is relied on chiefly for state revenue in Pennsylvania; is very important in New York, New Jersey, and Ohio; and yields substantial revenue in West Virginia and Texas. In the other States wherein it forms part of the tax system its importance varies. It is of less importance in Maryland and Vermont than in the other States.

The large collections shown in Table C from the capital-stock taxes in Pennsylvania, New York, and New Jersey are accounted for by the fact that this tax is part of the system of special taxes levied in these States as in other "separation" States for the purpose of replacing, under ordinary circumstances, the general property tax for state purposes. This is not true, however, of Ohio, West Virginia, and Texas, which States, as well as a number of others, impose the capital stock or other special taxes in addition to the general property tax.

A great variety of methods are used in imposing capital-stock taxes. In New York the statute is decidedly complex; it groups the corporations falling under its provisions into classes according to their earning power, solvency, and market price of stock. The tax is computed upon the basis of the amount of capital employed in the State, and is measured by such a proportion of the issued capital as the gross assets within the State bears to the gross assets wherever employed. In Pennsylvania the tax is based on net assets and is levied at a specific rate. In New Jersey it is based on issued and outstanding capital stock and is levied at graduated rates. In other States the tax is based on authorized capital stock, paid-up capital stock, proportion of capital stock representing business within the State, or on other factors.

The classes of corporations which are subject to the capital-stock tax also vary greatly as between the States.

In Vermont, New York,[a] Pennsylvania,[b] Nebraska, Georgia, Tennessee, Arkansas, Idaho, Colorado, Virginia,[c] Oregon, and California, the capital-stock tax is applied to each of the six classes

[a] In New York the capital-stock tax applies to manufacturing or mining companies if less than 40 per cent of capital stock is invested in manufacturing or mining in the State.

[b] In Pennsylvania manufacturing companies are subject to the capital-stock tax on capital represented by property not used in manufacturing.

[c] In Virginia the corporation registration tax applies to all six classes, but the capital stock franchise tax applies only to domestic manufacturing, mining, and mercantile companies and certain telephone companies.

of corporations treated in Table C; in New Jersey [a] and Delaware to each of the six classes operating exclusively outside of the State; in Maine to all domestic manufacturing, mining, and mercantile corporations and to domestic corporations of the other five classes operating exclusively outside of the State; in Texas to all of the classes except express companies; in Utah to all classes except car companies; in West Virginia to all of the classes except foreign express, telegraph, and telephone companies; in Maryland to foreign manufacturing, mercantile, and miscellaneous corporations; [b] in Massachusetts to foreign car companies (doing intrastate business) and foreign "business" companies; in Ohio, South Carolina, North Carolina, Kentucky, Alabama, and Oklahoma to foreign and domestic manufacturing, mining, and mercantile companies; [c] and also to car and railroad companies in North Carolina and Alabama, respectively.

Receipts or Earnings Method.

The receipts or earnings method, namely, the taxation of corporations on their net or gross receipts or earnings, is used more extensively than any other form of special taxes. It yields the greatest amount of revenue in California and it forms a very important part of the tax systems of Minnesota, Ohio, and New York. It is used more or less extensively in 26 other States and its application varies as follows: [d]

The receipts or earnings tax is applied in Maine, Rhode Island, New York, Pennsylvania, Maryland, California, and South Carolina to railroad, car, express, telegraph, and telephone companies; to the same classes except express companies in Vermont; [e] except car companies in Ohio; except telegraph companies in Minnesota; except steam railroad companies in New Jersey [f] and Texas; ex-

[a] In New Jersey the capital-stock tax applies to domestic manufacturing or mining companies if less than 50 per cent of capital stock is invested in manufacturing or mining in the State.

[b] Beginning 1914 it applies also to domestic corporations of this class.

[c] In Oklahoma mining companies paying a production tax are not required to pay the capital-stock tax.

[d] In none of the 48 States did the receipts or earnings method apply to manufacturing companies in 1912 (the year for which the data are shown in the above table), except to certain industries in Louisiana. Beginning with 1913, however, it was made applicable to manufacturing companies in Delaware.

[e] Repealed as to railroad and telephone companies in 1913.

[f] In New Jersey electric railroad, telegraph, and telephone companies are not taxed for state purposes, but are taxed on gross receipts for local purposes.

cept car and express companies in Virginia; and except car, telegraph, and telephone companies in Montana. In North Dakota, Arkansas, and Mississippi it applies to freight car companies; in Arizona, Connecticut, Delaware, Kansas, Missouri, and Wyoming to express companies; in Wisconsin to telephone companies; in Illinois by charter provision to the original lines of the Illinois Central Railroad; in Oklahoma to intrastate telegraph and telephone companies; in Florida to sleeping-car and express companies; in Washington to freight-car and express companies; in North Carolina and Louisiana to express,[a] telegraph,[a] and telephone companies, and also in Louisiana to certain manufacturing and mercantile companies. In Arizona it formerly applied to express, telegraph and telephone companies, but since 1913 it applies only to express companies.

In Connecticut, beginning with 1913, this form of taxation was extended to car, telegraph, and telephone companies.

Mileage Method.

The mileage method of taxing transportation and transmission corporations, namely, according to the number of miles of track route or wire located within the State, is used more extensively in the Southern and Southwestern than in any other group of States. This mileage method is applied to express, telegraph, and telephone companies in Vermont and Alabama and to the last-named two classes in Connecticut and Delaware; to railroad, car, express, telegraph, and telephone companies in Mississippi; to the same classes except railroads in Virginia; to foreign express, telegraph, and telephone companies in West Virginia; to railroad, express,[b] and telegraph [b] companies in North Carolina; to the same classes except steam railroads in Tennessee; and to railroads and telegraph companies in Florida.

Average Rate Method.

The average rate method consists in applying the average rate of the general property tax to the assessed valuation of property. It is almost always used for state purposes and is in lieu of other taxes on such property. It is applied in New Hampshire and Michigan to public-service corporations, where it produces the greater portion of state revenue; in New Jersey to steam rail-

[a] Repealed as to express and telegraph companies in 1913 for North Carolina.
[b] Beginning 1913.

roads; in Massachusetts to the corporate excess of public-service and domestic business corporations; in Wisconsin to railroad, car, express, and telegraph companies. It is used to a limited extent in Minnesota, Iowa, Kansas, and Missouri. It is applied to sleeping-car and telegraph companies in Minnesota and to car companies only in the three States last mentioned.

Other Methods.

Of the remaining methods found in the table, the most important is the corporate loan tax of Pennsylvania. This tax is levied on bonds issued by domestic corporations when held by residents of the State. It is collected at the source and yields a very substantial revenue.

License Systems of the Southern States.

Peculiar to the Southern and Southwestern group of States is the license system, which, when levied for state purposes, is usually extended to every county and incorporated city or town in the State. From the viewpoint of state revenue, as distinguished from local revenue, it does not differ materially from special taxes elsewhere imposed on corporations but it is with respect to its local application that this system is principally differentiated. The general rule for such license taxes in these States is that the counties and municipalities in which the corporation does business may each assess a license tax at one-half the state rate. Where a corporation operates in several counties and municipalities these local license taxes are in the aggregate much greater in amount than the state license tax. For example, the amount of a state license payable by a public-service corporation which operates in 40 counties and 10 municipalities of a State would be comparatively insignificant compared with the amount of local licenses paid by such corporations. The total of the local licenses would be about 25 times that of the state licenses in this case. As applied to public-service corporations, these licenses are based on population served, on gross receipts or on capital stock, but with respect to other business enterprises, whether conducted by corporations, copartnerships, or individuals, the base, measure, and rate embrace practically all known forms. Another peculiarity is that these licenses are subject to frequent changes by the legislature, and in some States the laws have been reenacted practically every two years.

Kinds of Taxes.

For the purpose of further facilitating comparisons and generalizations, material has been already presented in Table C in this part, which is presented in a different form in Table D in part IV, Table A in Part V, and Table D herewith. Table C, given above, is intended to show the relative importance of the use of the various taxes as indicated by financial results and the extent of their application, while Table D, herein, and similar tables in other parts are intended to show the great lack of uniformity in the kinds of taxes applied in the different States and in the application of taxes to different classes of corporations in the same State.

State Assessing Boards.

Tables D, E, and F, given in the introduction to Part V, showed the classification of State assessing boards and are here repeated and extended to include all of the 48 States.

Ex officio boards for tax administration are shown in Table E, which follows. Of the 21 States retaining this method of administration, 10 are among the Southern and Southwestern States.

TABLE E.—STATES WHEREIN CORPORATIONS ARE ASSESSED BY AN EX OFFICIO BOARD (OR OFFICER), TITLE OF BOARD, NUMBER OF MEMBERS, KINDS OF TAXES, AND CLASSES OF CORPORATIONS ASSESSED.

State.	Title.	Members.	Kinds of taxes and classes of corporations assessed by state board or officer.
New York [a]	Comptroller	1	State franchise tax on capital stock, state gross-earnings tax on transportation and transmission companies, and state gross-earnings and dividend tax on water, light, and power companies.
Pennsylvania	Auditor general	1	State capital-stock tax, and state gross-receipts tax on transportation, transmission, and electric light companies, corporate loan tax, and production tax on anthracite coal.
Delaware	State treasurer	1	State mileage tax on telegraph and telephone companies, state gross-receipts tax on express, heat, light, and power companies.
	Secretary of state	1	State franchise tax on capital stock, etc.
North Dakota [b]	State Board of Equalization.[c]	5	General property tax on steam, street, and interurban railroad, express, car, telegraph, and telephone companies.
Iowa	State Executive Council.[d]	4	General property tax on steam and interurban railroad, express, telegraph, telephone, and freight-car companies.

[a] "Special franchises" are assessed by a selected board. (See Table G.)
[b] Certain corporations are assessed by a tax commission.
[c] The governor, state auditor, state treasurer, attorney general, and commissioner of agriculture and labor.
[d] Governor, secretary of state, state auditor, and state treasurer.

			Telph. *q*			Telph
		Mfg. *pq*	Mfg. *q*	Mfg. *k*		Mfg.
Mileage tax						
License tax (flat amount)						
Instrument tax						
Exchange tax						

a Operating property.
b Freight-line companies.
c Distributable property.
d Sleeping-car companies.
e Foreign corporations only
f All taxes on the tangible
g Applies to companies ope
h Counties and municipaliti
i Applies to certain industr
j In Alabama paid to the c
k Domestic corporations pa
l Sleeping-car companies ar
m Domestic corporations o
n This class of domestic cor

tax imposed by the State.
cific license taxes.
ital stock employed in the State.
s per mile.
alf the amounts imposed for state purposes.
ing to population of city.

,000, or when operated over 400 miles of poles.
anies; collected locally.
each public-service corporation.
imposed by the State and municipalities have same authority.

TABLE E.—STATES WHEREIN CORPORATIONS ARE ASSESSED BY AN EX OFFICIO BOARD (OR OFFICER), TITLE OF BOARD, NUMBER OF MEMBERS, KINDS OF TAXES, AND CLASSES OF CORPORATIONS ASSESSED—Continued.

State.	Title.	Members.	Kinds of taxes and classes of corporations assessed by state board or officer.
Nebraska	State Board of Equalization and Assessment.[a]	5	General property tax on steam railroad, car, and freight line, and state gross-earnings tax on express companies.
Missouri	State Board of Equalization.[b]	5	General property tax on steam and street railroad, car, telegraph, telephone, and bridge companies.
	State auditor	1	State gross-receipts tax on express companies.
Montana	State Board of Equalization.[b]	5	General property tax on intercounty steam railroad companies.
Idaho	State Board of Equalization.[b]	5	General property tax on railroad, telegraph, telephone, car, and electric-current transmission companies.
Wyoming[c]	State Board of Equalization.[d]	3	General property tax on railroad, telegraph, telephone, car, and gross proceeds of mining companies; state gross-receipts tax on express companies.
New Mexico	do[e]	5	General property tax on railroad, telegraph, telephone, express, and sleeping-car companies.
Virginia	State Corporation Commission.[f]	3	General property and state franchise taxes on public-service and public-utility corporations, including state capital-stock tax payable by other classes of domestic corporations, and corporation registration tax.
West Virginia	Board of Public Works.[g]	7	General property tax on public-service corporations.
North Carolina	State Tax Commission.[h]	3	General property tax on railroad, express, telegraph, telephone, local public-utility and steamboat companies, and on the intangible property of domestic manufacturing, mercantile, and mining companies; the capital-stock tax on car, steamboat, local public-utility and manufacturing, mining, and mercantile companies.
South Carolina	State Board of Assessors.[i]	5	General property tax on operating property of railroad, telegraph, telephone, express, and sleeping-car companies; state gross receipts tax on all public-service corporations.
	State Board of Equalization.	(j)	General property tax on manufacturers of textile fabrics and cottonseed oil, on fertilizer companies, and on canal companies providing power.
Georgia	Comptroller general	1	General property tax on property and franchises of steam, street and electric railroad, car, express, telegraph, telephone, and public-utility companies.

[a] Governor, secretary of state, state auditor, state treasurer, and commissioner of public lands and buildings.
[b] Governor, state auditor, state treasurer, secretary of state, and attorney general.
[c] Wyoming has a tax commissioner, but his appraisements are advisory only.
[d] Secretary of state, state auditor, and state treasurer.
[e] Governor, state auditor, traveling state auditor, secretary of state, and attorney general.
[f] Three members appointed by the governor and confirmed by the legislature for terms of six years.
[g] Governor, secretary of state, state auditor, superintendent of free schools, state treasurer, attorney general, and commissioner of agriculture.
[h] The three members of the State Corporation Commission. They are elected for terms of six years.
[i] Treasurer of state, secretary of state, comptroller general, attorney general, and chairman of the Board of Railroad Commissioners.
[j] Chairmen of the county boards of equalization.

TABLE E.—STATES WHEREIN CORPORATIONS ARE ASSESSED BY AN EX OFFICIO BOARD (OR OFFICER), TITLE OF BOARD, NUMBER OF MEMBERS, KINDS OF TAXES, AND CLASSES OF CORPORATIONS ASSESSED—Continued.

State.	Title.	Members.	Kinds of taxes and classes of corporations assessed by state board or officer.
Florida	State board [a]	3	General property tax on railroads, street railway, telegraph, and sleeping-car companies.
	State comptroller	1	License taxes on certain public-service corporations.
Alabama [b]	State Board of Assessment.[c]	5	General property tax on the physical property of steam railroad, telegraph, and long-distance telephone companies.
Mississippi	Railroad Commission[d]	3	General property tax on railroad, express, sleeping-car, telegraph, and telephone companies; privilege taxes on railroad companies.
	State auditor	1	Privilege taxes on telegraph, telephone, express, and sleeping-car companies; gross-earnings tax on private car companies.
Tennessee	State Railroad Commission.[e]	3	General property tax on railroad and freight-car companies and the distributable properties of telegraph and telephone companies.
	State comptroller	1	State-privilege taxes on telegraph, telephone, express, sleeping-car, and public-utility companies.
Kentucky	Board of Valuation and Assessment.[f]	3	General property tax on the intangible property of all public-service corporations, and capital-stock tax on other classes of corporations.
	Railroad Commission[d]	3	General property tax on the tangible property of steam and electric interurban railroad companies.
Oklahoma	State Board of Equalization.[g]	7	General property tax on steam and street railroad, express, telegraph, telephone, sleeping-car, and pipe-line companies.
	State auditor	1	State-gross receipts tax on intrastate telephone, pipe-line, electric-light, gas, heat, waterworks, and power companies; and state-production tax on oil, natural gas, and mining companies.
Texas [h]	Comptroller of public accounts.	1	State-gross receipts taxes on street and electric railway, terminal, telegraph, telephone, express, car, light, water, oil well, and pipe-line companies; capital-stock tax on sleeping-car companies.

[a] State comptroller, attorney general, and state treasurer.
[b] Intangible property value assessed by selected board.
[c] Governor, secretary of state, state auditor, state treasurer, and attorney general.
[d] The members of the railroad commission are elected by popular vote.
[e] The members are elected by popular vote and are ex officio the board of tax assessors.
[f] Auditor of public accounts, state treasurer, and secretary of state.
[g] Governor, state auditor, state treasurer, secretary of state, attorney general, state examiner and inspector, and president of the board of agriculture.
[h] See also composite boards.

Composite boards, or boards composed partly of ex officio and partly of selected members whose duties are confined to tax matters, are used in nine States and are shown below in Table F. Of the States of the Southern and Southwestern group, Louisiana and Texas have such boards. In Louisiana there are seven selected and one ex officio member, and in Texas there are two ex officio and one selected member.

TABLE F.—STATES WHEREIN CORPORATIONS ARE ASSESSED BY A COMPOSITE STATE BOARD, TITLE OF BOARD, NUMBER OF MEMBERS, KINDS OF TAXES, AND CLASSES OF CORPORATIONS ASSESSED.

State.	Title.	Ex officio members.	Selected members.			Kinds of taxes and classes of corporations assessed by state board.
			Number.	How chosen.	Term of years.	
Connecticut..	Board of Equalization.[a]	2	1	Governor.....	4	Special state taxes on steam and electric railroad, telegraph, telephone, express, and car companies and savings banks; values other banks and insurance companies.
Indiana.....	State Board of Tax Commissioners.[b]	2	3	.....do.....	4	General property tax on steam and street railroad, telegraph, telephone, express, passenger car, and intercounty pipe-line companies, and special state tax on freight-car companies.
Illinois.....	State Board of Equalization.[c]	1	25	Elected.....	4	Corporate excess tax on all domestic corporations except manufacturing, mining, and newspaper, and general property tax on steam and street railroad companies.
Michigan.....	State Board of Assessors.[d]	1	3	Governor.....	6	State property tax on railroad, telegraph, telephone, express, and car companies.
Nevada.....	Nevada Tax Commission.[e]	1	2	Governor.....	4	General property tax on railroad, street railway, traction, car, telegraph, telephone, express, water, light and power, and net proceeds of mines.
Oregon.....	State Tax Commission.[f]	3	2	Governor, secretary of state, and state treasurer.	4	General property tax on practically all public-service corporations.
California....	State Board of Equalization.[g]	1	4	Elected.....	4	State gross-receipt taxes of public-service corporations and state franchise taxes on all other corporations.
Louisiana....	State Board of Appraisers.[h]	1	7	Governor, lieutenant governor, treasurer, attorney general, and secretary of state.	4	General property tax on operating property of railroad, telegraph, telephone, sleeping-car, and express companies.
Texas.....	State Tax Board.[i]	2	1	Governor.....	2	General property tax on the intangible property of steam railroad, bridge, and ferry companies.

[a] Comptroller and treasurer ex officio members.

[b] Secretary of state and auditor of state ex officio members.

[c] Auditor of public accounts ex officio member.

[d] Governor ex officio member.

[e] One member of the Railroad Commission, ex officio member.

[f] Governor, secretary of state, and state treasurer, ex officio members.

[g] State controller ex officio member.

[h] Auditor of public accounts, ex officio member.

[i] Comptroller of public accounts and secretary of state, ex officio members. The title of the selected member is state tax commissioner.

Selected boards, or boards in which all of the members are selected solely for the purpose of administering tax laws, are used in 20 States as shown below in Table G. Alabama and Arkansas are the only two States of the Southern and Southwestern group wherein corporations are assessed by such boards. West Virginia, Georgia, and Texas each has a selected official, and Florida has a selected board of officials, appointed solely for the purpose of performing certain important duties with respect to taxation, but none of them has original assessing power.

TABLE G.—STATES WHEREIN CORPORATIONS ARE ASSESSED BY A SELECTED STATE BOARD (OR OFFICER), TITLE OF BOARD, NUMBER OF MEMBERS, KINDS OF TAXES, AND CLASSES OF CORPORATIONS ASSESSED.

State.	Title.	How chosen.	Members.	Term, years.	Kinds of taxes and classes of corporations assessed by state board or official.
Maine	State Board of Assessors.	Legislature	3	6	Gross-receipts tax on railroad, street-railway, car, telegraph, telephone, and express companies, and state capital-stock tax on other domestic corporations.
New Hampshire	State Tax Commission.	Supreme court	3	6	General property tax on railroad, street-railway, telegraph, telephone, express, and car companies.
Vermont	Commissioner of Taxes.	Governor	1	2	Special state taxes on railroads, car, steamboat, express, telegraph, and telephone corporations.
Massachusetts	Tax Commissioner.[a]	do	1	3	Corporate excess tax on practically all corporations, and special state taxes on foreign business corporations.
Rhode Island	Board of Tax Commissioners.	do	3	6	State gross-earnings tax on public-service corporations, state corporate excess tax on mercantile, manufacturing, and other corporations not specially taxed.
New York	State Board of Tax Commissioners.	do	3	3	Values for local taxation special franchises—i. e., right of a public-service corporation to the use of the public streets.
New Jersey	State Board of Assessors.	do	4	4	Assesses railroad-property tax, special state taxes on express, telegraph, passenger-car, and domestic insurance companies, state capital-stock tax on miscellaneous corporations, and local franchise tax on certain corporations using public streets.

[a] The tax commissioner is also ex officio commissioner of corporations.

TABLE G.—STATES WHEREIN CORPORATIONS ARE ASSESSED BY A SELECTED STATE BOARD (OR OFFICER), TITLE OF BOARD, NUMBER OF MEMBERS, KINDS OF TAXES, AND CLASSES OF CORPORATIONS ASSESSED—Continued.

State.	Title.	How chosen.	Members.	Term, years.	Kinds of taxes and classes of corporations assessed by state board or official.
Maryland	State Tax Commission.	Governor	3	6	Makes personal property assessments (corporate excess) of all domestic corporations, except steam railroads and business corporations; determines state gross-receipts tax of steam railroad, telegraph, telephone, express, sleeping-car, pipe line, and light companies, and capital-stock tax of business corporations.
Ohio	Ohio Tax Commission.	do	3	6	Assesses general property tax of public-service corporations; assesses the state gross-earnings tax on steam, street, and electric railroad companies and gross-receipts taxes on express, telegraph, telephone, light, and water companies, and the state capital-stock tax on car and manufacturing, mercantile, and certain business companies.
Wisconsin	Tax Commission	do	3	8	State property tax on railroad, street and electric railway, express, telegraph, and car companies, and income tax on other corporations.
Minnesota	Minnesota Tax Commission.	do	3	6	State gross-earnings tax on railroad, express, car, and telephone companies; state property tax on telegraph companies.
North Dakota	Tax Commission	do	3	6	General property tax on light, heat, and power companies. The more important classes of corporations are assessed by an ex officio board.
South Dakota	do	do	3	6	General property tax on railroad, express, telegraph, telephone, and sleeping-car companies.
Kansas	do	do	3	4	General property tax on steam, interurban, and street railroad, car, express, and intercounty telegraph, telephone, and pipe-line companies; and gross-receipts tax on express companies.
Colorado	Colorado Tax Commission.	Governor and state treasurer.	3	6	General property tax on railway, telegraph, telephone, car, express, power, pipe line, water, street railway, gas, lighting and heating companies.

TABLE G.—STATES WHEREIN CORPORATIONS ARE ASSESSED BY A SELECTED STATE BOARD (OR OFFICER), TITLE OF BOARD, NUMBER OF MEMBERS, KINDS OF TAXES, AND CLASSES OF CORPORATIONS ASSESSED—Continued.

State.	Title.	How chosen.	Members.	Term, years.	Kinds of taxes and classes of corporations assessed by state board or official.
Utah	State Board of Equalization.	Governor	4	4	General property tax on intercounty public-service corporations and net proceeds and machinery of mining companies.
Washington	State Board of Tax Commissioners.	do	3	4	General property tax on railroad, street railway, telegraph, and cable; state gross receipts on express and freight-car companies.
Arizona	State Tax Commission.	Elected	3	6	General property tax on railroad, telegraph, telephone, and car companies; proceeds tax on mining companies, and state gross-receipts tax on express companies.
Alabama	do	Governor	3	4	General property tax on the intangible property of steam and electric railroad, telegraph, telephone, express, and local public-utility companies.
Arkansas	Arkansas Tax Commission.	do	3	6	General property tax on all public-service corporations other than freight-car companies; gross-receipts tax on freight-car companies; state capital-stock tax on all corporations.
West Virginia	State Tax Commissioner.	do	1	6	Has no original assessing powers.
Georgia	do	do	1	6	Has no original assessing powers, but has power to equalize property as between counties and between classes of property within a county.
Florida	Tax Commission	do	3	4	Has no original assessing powers.

Centralized Administration.

Probably of greater importance than any other is the question of efficient administration, and it is generally conceded that this is best obtained by the creation of a state board appointed for no other than tax administration purposes with personnel selected by reason of known skill in taxation matters, endowed with plenary powers respecting the supervision and selection of local assessors and the equalization of property values, and with full authority to administer all tax laws of the State. There is no doubt that the lack of coordination among hundreds of local assessors, each exercising individual judgment without responsibility to any central authority, inevitably results in inequality and injustice. The

most striking feature of the Southern and Southwestern group as a whole is the lack of centralized administration. This should not be understood as meaning that efficient administration is necessarily lacking in all of these States, or that individuals acting ex officio are incompetent, but no matter how competent an official, if he administers but part of the law or can give but part of his time to such important duties, the administration of the whole system must necessarily lack efficiency in some degree.

Another administrative feature in three States of this group which seems to be inexpedient on the grounds of economy and efficiency is the assessment of physical property and franchise value of the same corporation by separate boards. In Kentucky the Railroad Commission assesses the physical property of railroads and the State Board of Valuation and Assessment assesses their franchise value. In Alabama the State Board of Assessment assesses certain physical property of public-service corporations and the State Tax Commission assesses their franchise value. In Texas the physical property of railroads is assessed by 100 or more assessors acting independently, the intangible property is assessed by a state board, the rolling stock is assessed by a single county official, and the distribution of rolling-stock value is made by a state official, while the state rate for general taxation is determined by a board created for that particular purpose. Thus, a number of boards and officials are required to perform services which under a centralized administration would be more efficiently and economically accomplished by a single board or official.

Virginia.

Approximately 30 per cent of the state, as distinguished from local, taxes in Virginia was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

Virginia's constitution contains elaborate provisions affecting taxation. Transportation and transmission companies pay the general property tax to the State for state purposes and locally for local purposes. Manufacturing, mercantile, and miscellaneous corporations pay the general property tax locally for state and local purposes.

The physical property of public-service and public-utility corporations is assessed by the State Corporation Commission. Franchises are not assessed as property. All other property is assessed by local assessors.

In addition to the general property tax certain classes of corporations are required to pay the following which are in the nature of special taxes for state purposes only and are variously denominated by statutes. Every corporation doing business in Virginia pays a charter tax or nominal registration fee based on authorized capital stock. Domestic manufacturing, mercantile, mining, telegraph, and certain telephone companies pay also to the State the capital stock or franchise tax, which, like the annual charter tax, is based on authorized capital stock, and railroad, canal, telegraph, telephone, steamboat, water, heat, light, and power companies pay state taxes on gross receipts. Express, sleeping-car, telegraph, and certain telephone companies pay state taxes based on miles of route or line in the State.

The State's share of taxes collected in 1912 was approximately as follows: General property tax (other than that estimated as, paid by corporations), $2,197,558; from certain corporations $1,956,619; liquor tax, $513,406; inheritance taxes, $43,763; miscellaneous receipts, $1,715,630. Of the $1,956,619 received from corporations, 50 per cent was from railroad companies, 14 per cent from insurance companies, 9 per cent from financial companies, and 27 per cent from unclassified companies and corporation fees.

West Virginia.

Approximately 32 per cent of the state, as distinguished from local, taxes in West Virginia was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

The taxation system of West Virginia is characterized by the payment directly into the state treasury of the general property tax on public-service corporations for both state and local purposes.

Operating property of public-service corporations is assessed by the state board of public works, assisted by the state tax commissioner. All other taxable property is assessed by local assessors.

In addition to the general property tax domestic corporations pay to the State for state purposes an annual capital-stock or license tax based on authorized capital stock, and foreign corporations, with certain exceptions, pay a similar tax based on the proportion of capital stock represented by property owned and used in the State.

The State's share of taxes collected in 1912 was approximately as follows: From certain corporations, $665,928; liquor tax, $634,323; general property tax (other than that estimated as paid by corporations), $210,495; inheritance taxes, $168,233; miscellaneous receipts, $407,909. Of the $665,928 received from corporations, 22 per cent was from insurance companies, 7 per cent from railroad companies, and 71 per cent from unclassified companies.

North Carolina.

Approximately 36 per cent of the state, as distinguished from local, taxes in North Carolina was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

A notable feature of the tax system of North Carolina is the taxation of corporate excess of domestic manufacturing, mercantile, and miscellaneous corporations.

Transportation, transmission, manufacturing, mercantile, and miscellaneous corporations pay the general property tax to the State for state purposes and locally for local purposes, except that foreign manufacturing, mercantile, and miscellaneous companies pay the tax locally for state and local purposes.

All property of public-service corporations and the corporate excess of domestic manufacturing, mercantile, and miscellaneous corporations are assessed by the State Board of Tax Commissioners. All other property is assessed locally.

In addition to the general property tax, corporations pay the following taxes for state purposes only: Domestic and foreign corporations, except railroad, telegraph, telephone, and express companies, pay a capital-stock tax; railroad companies pay a mileage tax graduated according to gross earnings per mile; telegraph companies a mileage tax based on pole-line mileage; express companies a mileage tax based on route mileage; and telephone companies a tax on gross receipts.

The State's share of taxes collected in 1912 was approximately as follows: General property tax (other than that estimated as paid by corporations), $1,353,305; from certain corporations, $970,141; inheritance taxes, $5,265; miscellaneous receipts, $420,074. Of the $970,141 received from corporations, 31 per cent was from insurance companies, 31 per cent from railroad companies, 5 per cent from financial companies, 8 per cent from manufacturing companies, and 25 per cent from unclassified companies and corporation fees.

South Carolina.

Approximately 50 per cent of the state, as distinguished from local, taxes in South Carolina was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

The comptroller general is given extensive duties in the supervision of local tax matters in South Carolina.

All property of domestic and foreign corporations of the classes herein treated is taxed under the general property tax paid locally for state and local purposes. The State Board of Assessors, an ex officio board composed of the treasurer of state, secretary of state, comptroller general, attorney general, and chairman of the Board of Railroad Commissioners, assesses the operating property of railroad, telegraph, telephone, express, and sleeping-car companies. All other property is assessed locally.

In addition to the general property tax all public-service corporations pay to the State a gross-receipts tax, and other corporations pay a state tax which, with respect to domestic corporations, is based on paid-up capital stock, and with respect to foreign corporations, is based on the value of corporate property used in business in the State.

The State's share of taxes collected in 1912 was approximately as follows: From certain corporations, $1,136,640; general property tax (other than that estimated as paid by corporations),

$1,055,803; liquor tax, $48,568; miscellaneous receipts, $47,288. Of the $1,136,640 received from corporations, 25 per cent was from railroad companies, 16 per cent from insurance companies, 13 per cent from financial companies, 39 per cent from manufacturing companies, and 7 per cent from unclassified companies.

Georgia.

Approximately 22 per cent of the state, as distinguished from local, taxes in Georgia was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

Transportation and transmission companies pay the general property tax to the State for state purposes and locally for local purposes. Manufacturing and mercantile corporations pay the general property tax locally for state and local purposes.

Public-service and public-utility corporations are assessed by the comptroller general on all property, including franchise. The property of other corporations, as well as that of individuals, is assessed by local assessors.

In addition to the general property tax, domestic corporations pay locally for state purposes, and foreign corporations pay to the State for state purposes, the capital stock or annual occupation tax based on authorized capital stock.

The State's share of taxes collected in 1912 was approximately as follows: From certain corporations, $1,174,697; general property tax (other than that estimated as paid by corporations), $3,119,-352; liquor tax, $281,520; miscellaneous receipts, $695,294. Of the $1,174,697 received from corporations, 54 per cent was from railroad companies, 18 per cent from insurance companies, 16 per cent from financial companies, and 12 per cent from unclassified corporations.

Florida.

Approximately 22 per cent of the state, as distinguished from local, taxes in Florida was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

Taxation in Florida is characterized by an elaborate system of state licenses. Transportation, transmission, manufacturing, and mercantile corporations are subject to the general property tax, collected locally, for both state and local purposes.

The State Tax Commission is not given the power of original assessment. Steam and street railroads, and passenger car and telegraph companies are assessed by an ex officio state board composed of the state comptroller, attorney general, and state treasurer. Other corporations are assessed by county assessors. In addition to the general property tax, annual license taxes are collected by the State from the classes of corporations herein treated. Half of such taxes collected from steam railroad, telegraph, and express companies is returned to the counties. All of the license tax collected from car companies is retained by the State. With respect to other classes of companies the State retains its collections, but counties and cities or towns may each levy like taxes not in excess of 50 per cent of the state license taxes.

The State's share of taxes collected in 1912 was approximately as follows: From certain corporations, $528,091; general property tax (other than that estimated as paid by corporations), $1,149,520; miscellaneous receipts, $706,425. Of the $528,091 received from corporations, 50 per cent was from railroad companies, 35 per cent from insurance companies, 12 per cent from corporation fees, and 3 per cent from unclassified companies.

Kentucky.

Approximately 17 per cent of the state, as distinguished from local, taxes in Kentucky was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

All corporate property is taxed under the general property tax for state and local purposes.

The tangible property of railroad companies is assessed by the railroad commission, and the tangible property of all other classes of corporations by the local assessor. The intangible property of railroad, telegraph, telephone, express, car, street railway, light, water, ferry, and similar corporations is assessed by the State Board of Valuation and Assessment.

Manufacturing, mercantile, and miscellaneous corporations, domestic and foreign, pay the State supplemental taxes, either in the form of a license for a particular business or a capital-stock tax, based on the proportion of authorized capital stock represented by property owned and business transacted in the State.

The State's share of taxes collected in 1912 was approximately as follows: General property tax (other than that paid by

certain corporations), $4,087,378; from certain corporations, $1,079,270; liquor tax, $567,209; inheritance taxes, $101,577; miscellaneous receipts, $371,568. Of the $1,079,270 received from corporations, 34 per cent was from insurance companies, 31 per cent from railroad companies, 14 per cent from financial companies, 13 per cent from corporation fees, and 8 per cent from unclassified companies.

Tennessee.

Approximately 28 per cent of the state, as distinguished from local, taxes in Tennessee was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

Manufacturing, mercantile, transportation, and transmission corporations, except sleeping-car companies, pay the general property tax for state and local purposes.

In the case of steam and electric railroads and telegraph and telephone companies, the tax for state purposes is paid directly to the State and locally for local purposes. In the case of all other taxable corporations the tax is paid locally for state and local purposes.

All property of steam and electric railroads and freight-car companies and the distributable property of telegraph and telephone companies is assessed by the railroad commission acting as a Board of State Tax Assessors. Other taxable property is assessed by local assessors.

Sleeping-car companies pay an annual state privilege tax of a fixed amount, but their cars are not assessed under the general property tax. All corporations of the classes herein treated pay an annual tax, graduated according to the amount of capital stock, and telegraph and express companies pay also annual state privilege taxes graduated according to miles of wire or route, and telephone companies a similar tax on each instrument.

The State's share of taxes collected in 1912 was approximately as follows: From general property (other than that paid by certain corporations), $1,713,122; from certain corporations, $1,050,155; inheritance taxes, $164,962; liquor licenses, $344,546; miscellaneous receipts, $479,550. Of the $1,050,155 received from corporations, 32 per cent was from railroad companies, 48 per cent from insurance companies, 1 per cent from financial companies, and 19 per cent from unclassified companies and corporation fees.

Alabama.

Approximately 31 per cent of the state, as distinguished from local, taxes in Alabama was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

All corporations of the classes herein treated, except car companies, pay the general property tax locally for state and local purposes. Certain operating property of railroad, telegraph, and telephone companies is assessed by the State Board of Assessment and "franchise," or intangible property, of those companies, as well as that of public-utility corporations, is assessed by the State Tax Commission. All other property is assessed by county assessors. In addition to the general property tax, domestic corporations, except telegraph, telephone, express, and car companies pay locally, for state purposes, a franchise or license tax based on paid-up capital stock, and foreign corporations, with certain exceptions, pay a similar tax based on capital employed in the State. Telegraph and telephone companies pay a state license or privilege tax based on line mileage in the State, express companies pay a state license or privilege tax based on route mileage, and sleeping-car companies pay a lump-sum franchise or privilege tax in commutation of all other taxes.

The State's share of taxes collected in 1912 was approximately as follows: General property tax (other than that estimated as paid by corporations), $2,487,820; from certain corporations, $1,404,692; liquor tax, $127,717; miscellaneous receipts, $510,140. Of the $1,404,692 received from corporations, 46 per cent was from railroad companies, 18 per cent from insurance companies, 7 per cent from financial companies, and 29 per cent from unclassified companies and corporation fees.

Mississippi.

Approximately 19 per cent of the state, as distinguished from local, taxes in Mississippi was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

The revenue laws of Mississippi are distinguished by an elaborate system of privilege taxes for state purposes.

Domestic and foreign corporations, except freight-car companies, pay the general property tax locally for state and local purposes. The property of railroad, express, sleeping-car, telegraph, and tele-

phone companies used in their business is assessed by the railroad commission; all other property is assessed locally.

State privilege taxes of various kinds are imposed on practically all classes of corporations which, except as applied to freight-car companies, pay in addition a general property tax.

The State's share of taxes collected in 1912 was approximately as follows: General property tax (other than that paid by certain corporations), $2,027,660; from certain corporations, $583,809; miscellaneous receipts, $508,677. Of the $583,809 received from corporations, 61 per cent was from railroad companies, 31 per cent from insurance companies, and 8 per cent from unclassified companies and corporation fees.

Arkansas.

Approximately 30 per cent of the state, as distinguished from local, taxes in Arkansas was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

Domestic and foreign manufacturing, mercantile, transmission, and transportation corporations, except freight-car companies, are subject to the general property tax collected locally for state and local purposes. Property used in operation, including franchises of railroad, telegraph, telephone, express, sleeping-car, pipe line, and public-utility companies, is assessed by the State Tax Commission. All other taxable property is assessed by county assessors.

In addition to the general property tax, all corporations of the classes herein treated are subject to a capital-stock or annual franchise tax, which in legal theory is levied on the right to be or exist as a corporation, and freight-car companies pay also a state tax based on intrastate gross receipts.

The State's share of taxes collected in 1912 was approximately as follows: General property tax (other than that estimated as paid by corporations), $1,846,332; from certain corporations, $856,058; liquor tax, $87,134; inheritance taxes, $23,664; miscellaneous receipts, $25,974. Of the $856,058 received from corporations, 66 per cent was from railroad companies, 10 per cent from insurance companies, 6 per cent from financial companies, 4 per cent from corporation fees, and 14 per cent from unclassified corporations.

Louisiana.

Approximately 17 per cent of the state, as distinguished from local, taxes in Louisiana was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

The taxation laws of Louisiana are characterized by an elaborate system of state licenses.

Transportation, transmission, manufacturing, and mercantile corporations pay the general property tax locally for state and local purposes. The operating property of railroads, telegraph, telephone, sleeping-car, and express companies is assessed by the State Board of Appraisers. All other taxable property is assessed by local assessors.

In addition to the general property tax, all corporations of the classes herein treated, except railroads, sleeping-car, and certain manufacturing companies pay to the State for state purposes annual license taxes based upon gross receipts. Similar taxes not exceeding those for state purposes may also be imposed for local purposes.

The State's share of taxes collected in 1912 was approximately as follows: From general property tax (other than that estimated as paid by corporations), $2,192,490; from certain corporations, $712,104; inheritance taxes, $207,004; miscellaneous receipts, $970,603. Of the $712,104 received from corporations, 43 per cent was from railroad companies, 17 per cent from financial companies, and 40 per cent from unclassified companies and corporation fees.

Oklahoma.

Approximately 42 per cent of the state, as distinguished from local, taxes in Oklahoma was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

The constitution of Oklahoma, adopted in 1907, provides specifically for its system of taxation.

Transportation, transmission, manufacturing, and mercantile corporations pay locally the general property tax for state and local purposes.

Property of public-service and public-utility corporations is assessed by the State Board of Equalization. All other property is assessed by county assessors.

In addition to the general property tax, telephone, pipe-line, electric light, gas, heat, waterworks, and power companies, operating wholly within the State, pay to the State for state purposes a tax based on gross receipts. Oil, natural gas, and mining corporations pay a state tax on the gross value of their product, less royalties paid to Indians, and mercantile and manufacturing companies pay the annual state corporation license tax based on capital stock.

The State's share of taxes collected in 1912 was approximately as follows: General property tax (other than that estimated as paid by corporations), $1,561,856; from certain corporations, $1,181,409; inheritance taxes, $4,873; miscellaneous receipts, $55,572. Of the $1,181,409 received from corporations, 37 per cent was from railroad companies, 19 per cent from insurance companies, 6 per cent from corporation fees, and 38 per cent from unclassified corporations.

Texas.

Approximately 26 per cent of the state, as distinguished from local, taxes in Texas was paid in 1912 by certain classes of corporations. Taxes paid by other classes of corporations can not be estimated.

Transportation, transmission, mercantile, and manufacturing companies pay locally the general property tax for state and local purposes.

The intangible assets, or corporate excess, of steam railroad companies are assessed by the State Tax Board. All other corporate property is assessed locally for state and county taxes. In addition to the general property tax, all corporations, domestic and foreign, except express, car, and certain street railway companies, which pay occupation taxes based on gross receipts, pay to the State for state purposes graduated taxes based on the amount of authorized capital stock, or issued and outstanding capital stock and surplus.

Many other classes of corporations, including telegraph and telephone companies, pay also occupation taxes based on gross receipts or of fixed amounts.

Car companies pay no general property taxes but are taxed by special methods and for state purposes only.

The State's share of taxes collected in 1912 was approximately as follows: General property tax (other than that estimated as

paid by corporations), $5,962,081; from certain corporations, $2,766,972; liquor tax, $862,031; inheritance taxes, $47,579; miscellaneous receipts, $1,060,723. Of the $2,766,972 received from corporations, 39 per cent was from railroad companies, 15 per cent from insurance companies, 10 per cent from financial companies, 5 per cent from telephone and telegraph companies, 6 per cent from corporation fees, and 25 per cent from unclassified corporations.

VIRGINIA.

I. GENERAL VIEW.

Chief Features.

First. The application of the general property tax to nearly all classes of property.

Second. Supplemental taxation of corporations for state purposes.

Third. Assessment of the property of public-service and public-utility corporations by a state central board.

Fourth. Detailed provisions in the constitution concerning taxation, especially of corporations.

General Property Tax.

Domestic and foreign corporations, except car companies, pay the general property tax for state and local purposes. The state general property tax on public-service and public-utility corporations is paid directly into the state treasury, while the local taxes on such companies as well as the state and local general property taxes on other corporations are collected locally.

Public-service or public-utility corporations are assessed by the State Corporation Commission. Other corporations are assessed locally.

Taxes Supplemental to the General Property Tax.

In addition to the general property tax, the following special taxes are imposed for state purposes only: A charter tax or nominal registration fee based on authorized capital stock is payable annually to the State by domestic corporations and every foreign corporation doing business in Virginia. Domestic manufacturing, mercantile, mining, telegraph, and telephone companies (except telephone companies with a capital stock of $5,000, or less) also pay to the State the capital stock or franchise tax, which, like the annual charter tax, is based on authorized capital stock, and railroad, canal, telegraph, telephone, steamboat, water, heat, light, and power companies pay state taxes on gross receipts. Express, sleeping car, telegraph, and certain telephone companies pay state taxes based on miles of route or line in the State.

Stockholders and Bondholders.

Shares of stock of domestic corporations, of foreign railway, canal and public-utility corporations, and of foreign manufacturing, mining and mercantile corporations whose capital is taxed in the State, are not taxed in the hands of holders. With these exceptions, the shares of foreign corporations as well as the bonds of domestic and foreign corporations are taxable to holders.

Foreign Corporations.

Foreign corporations, of the classes herein considered, are taxed in practically the same manner as similar classes of domestic corporations. Foreign corporations, however, are not required to pay the capital stock or general franchise tax which is imposed on certain domestic corporations.

Administration.

The State Corporation Commission, consisting of three members appointed by the governor, and confirmed by the legislature, for terms of six years, assesses the property of public-service or public-utility corporations, the annual charter tax or state registration fee, the capital-stock or annual state franchise tax, and the gross-receipts and mileage taxes, treated herein. It also has authority to appoint special assessors for the purpose of assisting local commissioners of revenue in the assessment of mineral lands and mining property. A certified copy of the assessment of real and personal property, and of public-service or public-utility companies, as made by the commission, is furnished to the local officers, who verify such assessments [a] and levy the local taxes thereon. Appeals from assessments of the commission lie to the courts. [b] From the assessments of lands by local officials appeals lie to the circuit court, [c] and from their assessments of personal property appeals lie to a board of arbitration. One member of such board is chosen by the local revenue commissioner and another by the complainant, and their decision, or that of an umpire chosen by them, is final. [d]

The state auditor of public accounts furnishes assessment blanks for use of local commissioners of revenue and assessors and has

[a] Laws 1906, chap. 121.

[b] Constitution, Art. XIII, sec. 180: Code, p. 2205, sec. 28; Code, sec. 567; Laws 1908, chap. 165; Laws 1910, chap. 61.

[c] Code, sec. 444.

[d] Code, sec. 496.

general authority to supervise the enforcement of the revenue laws as administered by local officers.

In addition to assessing mineral lands and mining property the local revenue commissioners assess personal property annually.

Special state taxes payable by the classes of corporations treated herein (except the tax based on annual purchases), and the state general property tax on public-service or public-utility corporations, are paid to the state treasurer. Other general property taxes are paid to the county or city treasurers, as is also the state tax based on annual purchases which is payable by mercantile companies.[a]

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION.[b]

"Every law imposing, continuing or reviving a tax shall specifically state such tax." [c]

"The general assembly shall not enact any local, special, or private law * * * (*a*) for the assessment and collection of taxes * * *; (*b*) extending the time for the assessment for collection of taxes; (*c*) exempting property from taxation; * * *" [d]

"* * * No private corporation, association, or individual shall be specially exempted from the operation of any general law, nor shall its operation be suspended for the benefit of any private corporation, association, or individual." [e]

Provision is made for the election, for a term of four years, of commissioners of revenue for counties and cities.[f]

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[a] Sources of revenue in Virginia:

Municipal and local districts.—(*a*) General property tax; (*b*) poll tax; (*c*) charges by some municipalities for use of streets against certain public-utility corporations; (*d*) fines, fees, etc.

County.—(*a*) General property tax; (*b*) poll tax; (*c*) dog tax; (*d*) fines, fees, etc.

State.—(*a*) General property tax; (*b*) poll tax; (*c*) inheritance tax; (*d*) corporation tax; (*e*) income tax; (*f*) business tax and licenses; (*g*) fines, fees, etc.

[b] Except as otherwise indicated, references are to the constitution of the State, as contained in Vol. I of Pollard's Virginia Code, 1904.

[c] Constitution, Art. IV, sec. 50.

[d] Ibid., sec. 63, pars. 5, 6, 7.

[e] Ibid., sec. 64, par. 2.

Cities and towns are only local agencies of the State, and have only such powers as are given them by statute, and the power to tax does not give them the power to exempt from taxation. Whiting and others *v.* West Point, 88 Va., 905 (1892).

[f] Constitution, Art. VII, sec. 110, as amended 1910; Art. VIII, sec. 119, as amended 1912.

"In cities and towns the assessment of real estate and personal property for the purpose of municipal taxation, shall be the same as the assessment thereof for the purpose of state taxation, whenever there shall be a state assessment of such property." [a]

The constitution provides [b] for the appointment by the governor, subject to confirmation by the general assembly, of a State Corporation Commission of three members, for terms of six years, and that this commission may be charged by law with the duty of the assessment of the property of corporations and the appraisement of their franchises for taxation, and with the investigation of the subject of taxation generally.

"The commission shall make annual reports to the governor of its proceedings, in which reports it shall recommend from time to time * * * legislation in reference to * * * the subject of taxation."

Provision shall be made in the law for the following payments to the State by corporations: [c]

(1) Fees by domestic corporations for the granting, amendment, or extension of charters;

(2) Fees by foreign corporations for licenses to do business in the State;

(3) Annual registration fees of not less than $5 nor more than $25 by every domestic corporation, and by every foreign corporation doing business in the State, except by a purely charitable institution.

The failure by any corporation for two successive years to pay its annual registration fee, or to make its annual reports, shall, in ninety days after the expiration of the two years, operate as a revocation of the charter of a domestic corporation or of a license of a foreign corporation.

"Every corporation heretofore chartered in this State, which shall hereafter accept, or effect, any amendment or extension of its charter, shall be conclusively presumed to have thereby surrendered every exemption from taxation, and every nonrepealable feature of its charter." [d]

"All property, except as hereinafter provided, shall be taxed; all taxes, whether state, local, or municipal shall be uniform upon the same class of subjects, within the territorial limits of the

[a] Constitution, Art. VIII, sec. 128.
[b] Ibid., Art. XII, secs. 155, 156.
[c] Ibid., Art. XII, sec. 157.
[d] Ibid., Art. XII, sec. 158.

authority levying the tax, and shall be levied and collected under general laws."[a]

Except as otherwise provided, all assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The general assembly may allow a lower rate of taxation to be imposed for a period of years by a city or town upon land added to its corporate limits than is imposed on similar property within its limits at the time such land is added. Nothing in this constitution shall prevent the general assembly, after January 1, 1913, from segregating, for the purpose of taxation, the several kinds or classes of property, so as to specify and determine upon what subjects state taxes, and upon what subjects local taxes, may be levied.[b]

The general assembly may levy:[c]

(1) A tax on incomes in excess of $600 per annum;[d]

(2) A license tax upon any business which can not be reached by the ad valorem system;

(3) A state franchise tax.

In imposing a franchise tax the general assembly may make the same in lieu of taxes upon other property, in whole or in part, of a transportation, industrial, or commercial corporation.

Whenever a franchise tax shall be imposed upon a corporation doing business in the State, or whenever all the capital, however

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[a] Constitution, Art. XIII, sec. 168.

Uniform taxation requires uniformity not only in the rate of taxation, and in the mode of assessment upon the taxable valuation, but that uniformity must be coextensive with the territory to which it applies. If a state tax is imposed it must be uniform over the whole State; if by a county, city, or town or other subordinate district, the tax must be uniform throughout the territory to which it is applicable. Day *v.* Roberts, 101 Va., 248 (1903). This case construes a similar clause in the constitution of 1869.

The legislature has no power to exempt taxable persons and property in a town situated within the limits of a county, forming a part thereof, from county levies, as section 168 of the constitution expressly provides that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and this uniformity extends not only to the rate and mode of assessment, but also to the territory to be assessed. Campbell *v.* Bryant, 104 Va., 509 (1905).

The mandate of the constitution is that all property shall be taxed, save that exempt by constitutional authority, and that all taxes, whether state, local, or municipal, shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. That this mandate has been disregarded in the past is no reason why it should continue to be disobeyed. City of Norfolk *v.* Perry Co. and Another, 108 Va., 28 (1908).

[b] Constitution, Art. XIII, sec. 169.

[c] Ibid., Art. XIII, sec. 170.

[d] No tax shall be laid upon the net income of railway and canal corporations. Constitution, Art. XIII, sec. 176.

invested, of a domestic corporation shall be taxed, the shares of stock of such corporation shall not be further taxed.

"The general assembly shall provide for a reassessment of real estate, in the year 1905, and every fifth year thereafter, except that of railway and canal corporations, which, after January the first, 1913, may be assessed as the general assembly may provide." [a]

"The general assembly shall provide for the special and separate assessment of all coal and other mineral land; but until such special assessment is made, such lands shall be assessed under existing laws." [b]

The State Corporation Commission shall annually assess, in the manner required of the Board of Public Works by the law in force January 1, 1902, the value of the roadbed, and other real estate, rolling stock, and all other personal property whatsoever [c] in Virginia, of each railway corporation whatever its motive power, that is liable to taxation upon such property; the canal bed and other real estate, the boats and all other personal property whatsoever [c] in the State, of each canal corporation empowered to conduct transportation; and such property shall be taxed for state, county, city, town and district purposes, in the same manner as authorized by said law, at such rates of taxation as may be imposed by them respectively, from time to time, upon the real estate and personal property of natural persons; provided, that no tax shall be laid upon the net income of such corporations.[d]

Such railway or canal corporation, including also such as is exempt from taxation as to its works, visible property, or profits, shall also pay an annual state franchise tax, for the privilege of exercising its franchises in the State. This franchise tax, together with the taxes provided for in the paragraph above, shall be in lieu of all other taxes or license charges upon the franchises of such corporation, its shares of stock, and its property, except that such corporation shall not be exempt: (*a*) from the annual registration fee,[e] or (*b*) from assessments for street and other local improvements, or (*c*) from compensation that may be required by municipalities, for the use of streets or alleys.[f]

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[a] Constitution, Art. XIII, sec. 171.

[b] Ibid., Art. XIII, sec. 172.

[c] Except its franchise and the nontaxable shares of stock issued by other corporations.

[d] Constitution, Art. XIII, sec. 176.

[e] Required by constitution, Art. XII, sec. 157.

[f] Ibid., sec. 177.

The amount of the franchise tax payable annually by such railway or canal corporation[a] shall be 1 per cent of the gross transportation receipts of such company in each year ending June 30. When the road or canal of the corporation lies partly within and partly without the State the taxable transportation receipts shall be ascertained by multiplying the average gross transportation receipts per mile over its whole extent by the number of miles operated within the State, with reasonable deduction because of any excess of value of the terminal facilities or other similar advantages in other States over similar facilities or advantages in Virginia.[b]

Each railroad and canal corporation operating in the State shall make annual reports to the State Corporation Commission showing the taxable property in Virginia belonging to the corporation on June 30, preceding, and showing also its total gross transportation receipts for the year ending June 30. Thereupon the state corporation commission shall assess the taxable property of the corporation and ascertain the amount of the franchise tax and other state taxes chargeable against it. The taxes owing by said corporations are payable on or before December 1 following.[c]

Any corporation aggrieved by the above-mentioned assessment[d] may apply for relief to the circuit court of the city of Richmond. The court, if of opinion that the assessment is excessive, shall reduce the same; but, if of opinion that it is insufficient, shall increase the same.[e]

The above-described system of taxation as to railroad and canal corporations[f] shall remain until January 1, 1913, and thereafter until modified or changed, as may be prescribed by law. If, however, the said system becomes inoperative, the general assembly shall have power to adopt some other system.[g]

The property of public, religious, charitable, cemetery, educational, and similar corporations is exempt from taxation, but with the exception of public property and certain state bonds, the general assembly may enact laws taxing such property.[h]

"No other or greater amount of tax or revenue shall, at any time, be levied than may be required for the necessary expenses of the government, or to pay the indebtedness of the State."[i]

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[a] Required by Constitution, secs. 176, 177.
[b] Constitution, Art. XIII, sec. 178.
[c] Ibid., Art. XIII, sec. 179.
[d] Ibid., Art. XIII, secs. 176, 178.
[e] Ibid., Art. XIII, sec. 180.
[f] Ibid., Art. XIII, secs. 176–180.
[g] Ibid., Art. XIII, sec. 181.
[h] Ibid., Art. XIII, sec. 183.
[i] Ibid., sec. 188.

STATUTES.[a]

General Property Tax.

Domestic and foreign corporations of the classes herein treated, except car companies,[b] are subject to the general property tax on all property exclusive of franchise.[c] Mercantile companies pay, in lieu of the state general property tax, a license tax based on annual purchases.[d] The constitution requires the assessment of real and tangible personal property at its "fair market value," except as otherwise provided.[e] In practice, however, property is assessed at an average of about one-third of its true value.[f]

The code defines the word "real estate" as including lands, tenements, and hereditaments, and all rights thereto and interests therein, other than a chattel interest.[g] For purposes of taxation it also divides personal property into tangible and intangible and each of these is subdivided into a number of classes.[h] As applied to manufacturing, mining, and mercantile companies, the term "capital" is by statute defined so as to include moneys and credits actively used in carrying on the trade or business; materials, goods, wares and merchandise on hand, and all solvent bonds, demands, and claims made and contracted in the business during the preceding year.[i]

The property of public-service or public-utility corporations is assessed annually by the State Corporation Commission. All other property is assessed locally. Real estate and improvements, except mineral lands and that belonging to public-service or public-utility corporations, is assessed every five years by assessors appointed by the court,[j] and personal property is assessed annually by the county and city commissioners of revenue.[k]

Real estate, with certain exceptions, is assessed where situated.[l] Personal property, with certain exceptions, is assessed at the resi-

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[a] Except as otherwise indicated, the references herein are to Pollard's Virginia Code, 1904.

[b] Laws 1908, chap. 219.

[c] Code, secs. 456, 487.

[d] Constitution, p. 2220, sec. 46.

[e] Ibid., Art. XIII, sec. 169.

[f] Interview with state tax officials, October, 1914.

[g] Code, sec. 5.

[h] Code, pp. 2191 et seq., as amended, Laws 1908, chap. 213; Laws 1910, chap. 314; and Laws 1914, chap. 4.

[i] Code, p. 2221, as amended, Laws 1914, chap. 280; Code, p. 2191, as amended, Laws 1908, chap. 213. Bridgewater Mfg. Co. *v.* Funkhouser, 115 Va., 476 (1913).

[j] Code, sec. 437, as amended, Laws 1910, chap. 69.

[k] Ibid., secs. 455 et seq., 491, 492.

[l] Ibid., secs. 476, 477.

dence of its owner. Ordinarily the situs of personal property of a corporation is its principal place of business. If such property is not properly listed by the corporation, it may be taxed where located.[a]

Credits are taxable. Deduction of debits from credits is allowed individuals,[b] railroads, and canal companies,[c] but not to other corporations.

Money on hand or on deposit is taxable for state purposes only.[d]

The property of public, religious, charitable, cemetery, educational, and similar corporations, grain, tobacco, and other agricultural products in the hands of the producer,[e] shares of stock in companies whose entire capital is taxed in the State,[b] shares in building and loan associations,[f] and shares in companies which pay a state franchise tax, are exempt from taxation.[g]

The State's share of the general property tax is 35 cents on each $100, divided as follows: On real and tangible personal property, 20 cents a hundred for the expenses of the government and the indebtedness of the State, 10 cents a hundred for public schools, and 5 cents a hundred for pensions. On intangible personal property, 25 cents a hundred for state expenses, and 10 cents a hundred for schools.[h] The state rate on money is 20 cents on each $100.[d] These rates are statutory and of course may be changed at any session of the legislature.

Special Taxes.

As above stated, franchise value is not assessed as property, but is reached through an elaborate system of special taxes which vary as to base in their application to the different classes of corporations and are differently denominated by statutes. As it is

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[a] Code, sec. 492.

The proper place for the taxation of intangible property of a corporation, such as stocks and bonds, is at the principal place of business of the corporation (Code, 1904, sec. 492), designated as such in its certificate of incorporation. "Its motive in fixing its principal office in a place other than where its principal business was done, for the purpose of getting a lower rate of taxation, is not material in construing the statute in question. * * * If such an evil exists, another authority than ours must provide for its correction." Loyd's Executorial Trustees *v.* City of Lynchburg, 113 Va., 627 (1912).

[b] Laws 1908, chap. 213.

[c] Laws 1912, chap. 214.

[d] Laws 1914, chap. 4.

[e] Code, secs. 457, 487; Laws 1910, chap. 314.

[f] Code, p. 2236.

[g] Constitution, Art. XIII, sec. 170; Laws 1908, chap. 213.

[h] Code, p. 2195; Laws 1908, chap. 9.

difficult to determine in some cases those taxes which in legal theory are based on "franchise," all special taxes and licenses applicable to the classes of corporations treated herein and the names given them for the purpose of this report are described as follows:

Annual charter tax.—This tax, denominated by statute "annual registration fee," is based on total authorized capital stock. It is paid to the State for state purposes by domestic and foreign corporations of all classes. The rate of this tax varies in amount from $5, when the authorized capital is less than $15,000, to $25, when in excess of $300,000.[a]

Capital-stock tax.—This tax, denominated by statute "annual state franchise tax," is based on total authorized capital stock and is payable to the State for state purposes. It is imposed on domestic corporations only, and of the classes herein treated it applies to domestic telephone companies having a capital stock of over $5,000, and to all domestic telegraph, mercantile, manufacturing, mining, and miscellaneous companies. It varies in amount from $10, when the authorized capital stock is $25,000 or less, to $200, when the authorized capital stock is $500,000 to $1,000,000. For each $100,000 in excess of $1,000,000 an additional $10 is levied.[b]

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[a] Laws 1908, chap. 227.

Provision is made for such annual registration fees both in the constitution (Art XII, sec. 157) and in the act to carry the provisions of the constitution into effect (Code, sec. 1313a).

Where the authorized capital stock—	Registration fee.
Is $15,000 or less	$5
Exceeds $15,000 and does not exceed $50,000	10
Exceeds $50,000 and does not exceed $100,000	15
Exceeds $100,000 and does not exceed $300,000	20
Exceeds $300,000	25

[b] Laws 1910, chap. 58.

Where the authorized capital stock—	
Is $25,000 or less, the tax is	$10
Exceeds $25,000 but does not exceed $50,000	20
Exceeds $50,000 but does not exceed $100,000	40
Exceeds $100,000 but does not exceed $300,000	60
Exceeds $300,000 but does not exceed $500,000	100
Exceeds $500,000 but does not exceed $1,000,000	200

For each $100,000 of authorized capital stock or fraction thereof in excess of $1,000,000 the tax is $10.

This tax was made general in its application, with certain exceptions named in the act imposing it (Code, p. 2218), and certain other exceptions were made by Laws 1908, chaps. 165 and 219, and Laws 1910, chap. 111.

Gross-receipts taxes.—These taxes are variously denominated by statute. The gross-receipts tax applied to railroads is called a "franchise tax;" that applied to telegraph and telephone companies an "annual state license," etc. They are applied to domestic and foreign railroad, telegraph, telephone, steamboat, water, light, heat, and power companies.

Mileage taxes.—These taxes, denominated by statute "annual state license taxes," are based on the route or line mileage of foreign and domestic express, sleeping car, telegraph, and certain telephone companies.

Tax based on annual purchases.—A tax based on the amount of annual purchases and denominated by statute an "annual license tax," is imposed on mercantile companies in lieu of the general property tax for state purposes on their "capital." [a]

Steam and Electric Railroad and Canal Companies.

Domestic and foreign steam and electric railroad and canal companies not exempt from taxation by charter [b] pay to the State for state purposes and locally for local purposes the general property tax. In addition, they pay to the State for state purposes the annual charter tax, and a gross-receipts tax. [c]

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[a] For convenience, the rates of the annual charter and capital-stock taxes are not repeated in treating the various classes of corporations. The rates of the other taxes above described are given in showing their application under the various subheadings which follow.

[b] Perpetual exemption from taxation could, previous to 1851, be contracted for by the State to a corporation, and such contract would be binding as to that particular corporation; but such exemption does not pass to another corporation that purchases the "franchises, rights, and privileges" of the corporation with which the State made the contract of exemption. Lake Drummond Canal Co. *v.* Commonwealth, 103 Va., 337 (1905). No railroads or canals can secure exemption from taxation after the adoption of the Virginia constitution of 1902 (Art. IV, sec. 63, pars. 5, 6, and 7), and any corporation accepting amendment or extension of its charter, is presumed to thereby surrender every exemption from taxation. (Constitution, Art. XII, sec. 158.)

If it be conceded that, by virtue of its charter, the Richmond, Fredericksburg and Potomac Railroad Co. was not liable to a franchise tax prior to July 10, 1902, yet having thereafter accepted the new and enlarged powers tendered by the act of assembly of April 2, 1902, not previously possessed by it, by which it was enabled to change the location of its line, and by which its powers of eminent domain were materially enlarged and extended, such acceptance constituted an amendment of its charter, and the company thereby surrendered its exemption from taxation in pursuance of section 158 of the constitution declaring that any corporation which should thereafter accept, or effect, any amendment or extension of its charter, should be conclusively presumed to have thereby surrendered every exemption from taxation or other privilege not enjoyed by other like corporations. Commonwealth *v.* R. F. & P. R. Co., 111 Va., 611 (1911).

[c] These companies pay also taxes or licenses for engaging in other lines of business; thus, if steam railroads sell mineral, forest, or other products, they pay the license

Railroad property may be described as classified for assessment purposes as (*a*) "track," which includes the right of way, rails, bridges, and all similar right-of-way superstructure of main line, branches, etc.; (*b*) "rolling stock;" and (*c*) all "other property," including stations, grounds, machinery, etc. Franchises are not assessed under the general property tax.

Assessment of physical property is by the State Corporation Commission,[a] but the commission does not disclose the exact method of determining valuations, which, however, are based largely upon reports from the companies. After the valuation of "track" has been determined, it is reduced to a valuation per mile for each kind of track. The number of miles of each kind of track in any county, municipality, or taxing district, multiplied by its respective valuation per mile, equals the assessable value of track therein.

The valuation of rolling stock is apportioned to the counties and minor taxing districts through which the railroad passes. Such apportionment is based upon that proportion which the state assessment of railroad property permanently located within each such county, city, or minor taxing district bears to the total state valuation of railroad property permanently located within the State, and is taxed at the same rates as apply to other property therein.[b]

The rolling stock of foreign railroads is assessed on the average amount of rolling stock used in the State.[a]

The valuation of all property other than track and rolling stock is assigned directly to the county, municipality, or taxing district where located.[c]

The gross receipts or annual franchise tax payable by these classes of companies is by statute declared to be a tax for the privilege of exercising corporate franchises in Virginia; it is levied at the rate of 1 per cent upon the gross transportation receipts.[d] When a railroad or canal operates partly within and partly without the State, the taxable receipts earned within the State are

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tax imposed on merchants; if electric railway companies furnish light, heat, and power for a consideration, they pay the gross-receipts tax applicable to light, heat, and power companies. (Laws 1912, chap. 333, and Code, p. 2222, sec. 47.)

[a] Laws 1912, chap. 214.

[b] Laws 1914, chap. 135.

[c] Code, p. 2202, sec. 27, as amended, Laws 1912, chap. 214; Laws 1906, chap. 121.

[d] Constitution, Art. XIII, secs. 177, 178; Code, p. 2205, sec. 28.

determined as follows: (*a*) A reasonable allowance is first made for any excess in the value of terminal or other facilities situated without the State over similar facilities situated in Virginia; (*b*) the amount of gross transportation receipts earned over the entire line is then reduced to an average per mile, which, multiplied by the number of miles of line operated in Virginia, equals the taxable receipts.

Each steam and electric railroad and canal company is required to report annually to the State Corporation Commission the value and location of all its physical property within the State, the average amount of its rolling stock habitually used within the State, its stock and bond holdings, and certain other information specified by statute.[a]

Telegraph and Telephone Companies.

Domestic and foreign telegraph and telephone companies pay to the State for state purposes, and locally for local purposes, the general property tax. In addition, domestic telephone companies with an authorized capital stock of more than $5,000, and all domestic telegraph companies, pay to the State for state purposes the capital-stock or annual state franchise tax,[b] and all telegraph and telephone companies pay the annual charter tax or state registration fee[c] and certain state gross-receipts and mileage taxes.

Telegraph and telephone property is generally classified as "pole" or "conduits," and all "other property." Franchises are not assessed as general property. The commission determines for each company a valuation per mile for "pole" line and "conduits." One wire is included in this valuation. Additional wires are included in the valuation of "other property." The number of miles of "pole" line in any county, city, or town, multiplied by the valuation per mile, equals the assessable value therein. The valuation of "other property" is assigned to the county, city, or town, wherein it is located.[d]

The amount of the gross-receipts and mileage taxes paid by telegraph and telephone companies is also determined by the commission. The rates and application of such taxes are as follows:[e]

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[a] Laws 1912, chap. 214.
[b] Laws 1910, chap. 58.
[c] Laws 1908, chap. 227.
[d] Laws 1910, chap. 256.
[e] Ibid., chap. 150.

(*a*) Telegraph companies pay $2 for each mile of poles or conduits operated in the State and 2 per cent of their annual gross receipts from business within the State.[a]

(*b*) Telephone companies, except under certain conditions, pay 1 per cent on their annual gross receipts from business within the State. If, however, their gross receipts exceed $50,000, or if the number of miles of poles exceeds 400, or if a majority of the stock or other property is owned or controlled by any other telephone or telegraph company whose receipts exceed $50,000, they then pay a tax of 1 per cent on the first $50,000 or less, 2 per cent on such receipts in excess of $50,000, and a tax of $2 per mile for each mile of poles or conduits operated in the State.[b]

Each company of the classes above mentioned is required to report to the State Corporation Commission its status, business, and condition [c] in such form as the commission may require.

Express Companies.

Domestic and foreign express companies pay the general property tax to the State for state purposes, and locally for local purposes. In addition they pay to the State for state purposes both the annual charter tax or state registration fee,[d] and a mileage tax.

The tangible property of express companies is assessed by the State Corporation Commission. Such assessments are based on annual reports from the express companies.[e]

Franchises are not assessed as property. The mileage tax, $6 for each mile of route operated in Virginia, is by statute declared to be a tax for the privilege of doing business between points within the State.[f]

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[a] A city ordinance imposing a privilege tax on telegraph companies is not in conflict with the provisions of the Virginia constitution, stating that the general assembly * * * "may levy a license tax upon any business which can not be reached by the ad valorem system." The tax imposed by the ordinance is a tax upon the privilege of doing business in the city, and is wholly different from a property tax. It is immaterial that the State taxes the property of the company on the ad valorem system. The two subjects of taxation are wholly different and both may be taxed without being obnoxious to the objection that it is double taxation. Postal Telegraph-Cable Co. *v.* Norfolk, 101 Va., 125 (1903).

[b] Laws 1910, chap. 150.

[c] Ibid., chap. 256.

[d] Laws 1908, chap. 227.

[e] Ibid., chap. 165.

[f] Laws 1910, chap. 111.

Car Companies.

Domestic and foreign passenger car companies pay to the State for state purposes both the annual charter tax or state registration fee,[a] and a mileage tax.

The mileage tax, $2 for each mile of track over which the cars are operated within the State, is assessed by the State Corporation Commission. Such assessments are based on reports from the car companies.[b]

The state general property tax is not applied to passenger car companies,[b] nor is there any specific statutory provision for the assessment of their property for local taxation.

Freight-car companies are not taxed in Virginia.

Steamboat Companies.

Domestic and foreign steamboat companies pay the general property tax to the State for state purposes, and locally for local purposes. In addition, they pay to the State for state purposes the annual charter tax or state registration fee,[a] and a gross-receipts tax.

Tangible property of steamboat companies, including boats, wharves, etc., is assessed by the State Corporation Commission. Such assessments are based on annual reports from the companies.

The gross-receipts tax, one-half of 1 per cent on intrastate gross receipts, is declared by statute to be a tax for the privilege of doing business between points in the State.[c]

Water, Heat, Light, and Power Companies.

Domestic and foreign water, heat, light, and power companies pay the general property tax to the State for state purposes, and locally for local purposes.[d] In addition, they pay to the State for state purposes both the annual charter tax or state registration fee,[a] and a gross-receipts tax.

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[a] Laws 1908, chap. 227.

[b] Ibid., chap. 219.

[c] Ibid., chap. 165.

Held that vessels, belonging to a Delaware corporation, employed wholly in commerce within the limits of Virginia, even though engaged in interstate commerce, are subject to taxation in Virginia, notwithstanding the fact that they may have been registered or enrolled at a port outside its limits. Old Dominion Steamship Co. *v.* Virginia, 198 U. S., 299 (1905).

[d] Laws 1910, chap. 61.

The tangible property of these companies is assessed by the State Corporation Commission. Such assessments are based on annual reports from the companies. Franchises are not assessed under the general property tax.

The gross-receipts tax, one-half of 1 per cent of intrastate gross receipts, is declared by statute to be a tax for the privilege of exercising franchises in the State.[a]

Manufacturing, Mercantile, Mining, and Miscellaneous Corporations.

Domestic and foreign manufacturing, mercantile, mining, and miscellaneous companies[b] pay the general property tax, assessed and collected locally, for state and local purposes, on real estate and capital,[c] except that in lieu of the state general property tax on "capital"[d] of mercantile companies there is imposed an annual state license tax for state purposes based on the amount of annual purchases. In addition, domestic corporations of the above-mentioned classes pay to the State for state purposes the capital stock or annual state franchise tax,[e] and both domestic and foreign companies pay to the State for state purposes the annual charter tax or state registration fee.[f]

Mineral lands, and the improvements, fixtures, and machinery thereon, are separately assessed annually by the commissioners of revenue, who may be assisted by special assessors employed by the State Corporation Commission.[g] Mineral lands under development and not under development are shown separately upon

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[a] Laws 1910, chap. 61; Laws 1912, chap. 333.

[b] Machinery and fixtures of manufacturing and mining corporations are assessed by the commissioners of revenue as part of the real estate when the real estate, machinery, and fixtures belong to the same person, but as personal property when the real estate belongs to one person and the machinery and fixtures to another. Code, sec. 485.

[c] Code, pp. 2191, 2195; Laws 1908, chap. 213; Laws 1910, chap. 314.

"Capital" is defined by statute to include moneys and credits actively used in carrying on the trade or business; materials, goods, wares, and merchandise on hand, and all solvent bonds, demands, and claims made and contracted in the business during the preceding year. Laws 1908, chap. 213, sec. 8, subdivisions 2, 3, 4.

Held that the word "capital" signifies money and other property adventured in the business, whether borrowed or not, and is not limited to the original capital paid in by the shareholders on purchase of stock, less the amount invested in real estate and money borrowed by the company to be used in conducting its business. Bridgewater Mfg. Co. *v.* Funkhouser, 115 Va., 476 (1913).

[d] Code, p. 2221, as amended by Laws 1914, chap. 280, sec. 46.

[e] Laws 1910, chap. 58.

[f] Laws 1908, chap. 227.

[g] Code, sec. 437a, as amended, Laws 1912, chap. 95.

the assessment books.[a] Standing merchantable timber is also separately assessed by the commissioners of revenue.[b]

The rate of the license tax based on the amount of the annual purchases of mercantile companies, varies from $5 when the annual purchases are less than $1,000, and $10 when less than $2,000, to 30 cents on each $100 of the excess over $2,000 up to $50,000, with an additional tax of 10 cents for each $100 in excess of $50,000.[c]

Stockholders and Bondholders.

Shares of stock of domestic corporations,[d] of foreign railway, canal, water, heat, light, or power corporations, which pay a state gross-receipts tax,[e] or of foreign manufacturing, mining, and mercantile corporations whose capital is taxed in the State, are not taxed in the hands of holders. With these exceptions, the shares of foreign corporations and bonds of domestic and foreign corporations are taxable to holders.[f]

Foreign Corporations.

Foreign corporations, of the classes herein considered, are taxed in practically the same manner as similar domestic corporations, the most important exception being that foreign corporations are not required to pay the capital stock or annual state franchise tax which is imposed on certain domestic corporations.[g]

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[a] In ascertaining the quantity of mineral lands "improved and under development," the entire body of land underlaid with coal, upon which mines have been opened and are being operated, should be assessed and not merely so much land as will be deprived of its coal before the next assessment, and it is not error to take as an index the number of coke ovens in operation on the land. At the next assessment the lands which have been deprived of their coal should be deducted. Interstate Coal & Iron Co. *v.* Commonwealth, 103 Va., 586 (1905).

"Improved and under development" means opened-up mine entries and butt entries, extending to solid coal so as to render the land immediately accessible for practical mining. Commonwealth *v.* Pocahontas Coal & Coke Co., 107 Va., 666 (1908).

[b] Code, sec. 470, as amended, Laws 1910, chap. 99.

[c] Code, p. 2220, secs. 45, 46, as amended, Laws 1914, chap. 280.

The Standard Oil Co. is not a merchant when it sells and delivers oil from tank wagons in Fredericksburg, Va., for the reason that it has no store or shop from which it sells the oil. It can not, therefore, by voluntarily paying a state license as a merchant, prevent the assessment of a specific tax against its business by the city of Fredericksburg. Oil of said company, whether sold in original barrels or from the plaintiff's wagons, may be taxed as part of the general mass of property in the State and without interfering with interstate commerce. Standard Oil Co. *v.* Fredericksburg, 105 Va., 82 (1906).

[d] Laws 1908, chap. 213.

[e] Code, p. 2205, sec. 28; Laws 1912, chap. 333.

[f] Code, p. 2193, as amended by Laws 1908, chap. 213.

[g] Laws 1910, chap. 58.

III. FINANCIAL RESULTS.

Classification of Revenue.

The proportion of total state taxes for state purposes derived from corporations for 1912 was approximately 30 per cent.

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED SEPTEMBER 30, 1912.[a]

Total state receipts, all sources		$7,051,641.00
State taxes from corporations:		
Railroads (steam and electric)[b]—		
General property	$410,297.91	
Gross receipts	559,637.74	
Sleeping-car companies	5,433.58	
Express companies—		
General property	309.57	
Mileage	26,724.96	
Telegraph and telephone companies—		
General property	10,261.33	
Mileage and gross earnings	43,745.82	
Water, heat, light, and power companies—		
General property	23,066.15	
Gross receipts	35,908.28	
Steamboat companies—		
General property	4,515.46	
Gross receipts	3,279.73	
Manufacturing, mining, and miscellaneous (capital)[c]	33,293.32	
Mining (realty)[c]	98,275.39	
Banks (taxes and fees)	166,147.09	
Insurance companies (taxes and fees)	281,667.44	
Registration taxes (capital stock)	64,152.00	
Franchise taxes (capital stock)	136,110.15	
Incorporation fees	53,793.14	
Total ascertainable State taxes from corporations		1,956,619.06
Other taxes:		
Business, professional, etc., licenses	699,261.54	
Liquor licenses	513,406.49	
Motor-vehicle licenses	51,488.38	
General property tax[d] (less $131,568.71 above estimated)	2,197,558.26	
Capitation tax	428,927.30	
Tax on deeds, contracts, wills, suits, etc	369,195.83	
Income tax	134,561.72	
Collateral inheritance tax	43,763.13	
Miscellaneous taxes	32,194.11	
Total state taxes not from corporations		4,470,356.76
Total taxes for state purposes, all sources		6,426,975.82

[a] Annual Report of the Auditor of Public Accounts, 1912, p. 8.

[b] Includes $1,360 collected from canal companies.

[c] Estimated by applying the state rate of 3.5 mills to the assessed values of the property as shown in Report of the Auditor of Public Accounts, 1911, Tables 38 and 40.

[d] Part of this comes from local taxation of corporations, but it is practically impossible to ascertain the amount thus received, except the amounts above estimated, which are not included in this item.

Receipts from sources other than taxes:		
Penitentiary—proceeds from hire of convicts	$127,003.66	
Oyster and fish industry—proceeds	71,103.81	
Dispensaries—State's portion of profits	16,291.00	
Agricultural department receipts (fees, inspection, etc.)	115,958.29	
Departmental fees	25,046.03	
Collections from counties for judges' salaries	59,830.90	
United States Government, aid to colleges	50,000.00	
Interest on deposits	17,476.40	
Fines, fees, etc	110,750.33	
Miscellaneous receipts	31,204.76	
Total receipts from sources other than taxes		$624,665.18
Total state receipts, all sources		7,051,641.00

IV. COMMENTS.

Historical.

Specific taxation of corporations is noted in Virginia as early as 1843.[a] In that year railroads, steamboat, manufacturing, insurance, and every incorporated joint-stock company were required to pay the State a tax of 2½ per cent on all dividends declared. This tax, later reduced to 1½ per cent,[b] continued in force until the passage of the revenue act in 1853,[c] which act provided for the local assessment of the real estate and of the capital of all companies of the above-mentioned classes.

Other special provisions for the taxation of railroads and special provisions for the taxation of express companies were enacted in 1856. Railroads were permitted to pay, in lieu of all property taxes, a tax of 1 mill for every mile each passenger was transported,[d] and express companies a state license tax of one-half of 1 per cent on the gross receipts.[d] To the railroad passenger tax was added, in 1860, a tax of one-half of 1 per cent on gross freight receipts,[e] and to the express company gross-receipts tax was added a flat tax of $50.[f] During the same year railroad and canal companies were grouped for taxation purposes, and since that time tax laws applied to railroads have, with occasional exceptions, also applied to canal companies.

In 1862 telegraph companies were required to pay a flat tax of $100; and in addition a tax of 10 per cent on dividends in excess of 6 per cent; but if there were no such dividends, their property was taxable under the general property tax.[g] This, during the

[a] Laws 1842–43, chaps. 1, 2.
[b] Laws 1844–45, p. 7.
[c] Laws 1852–53, chap. 7.
[d] Laws 1855–56, chap. 9.
[e] Laws 1859–60, chap. 1.
[f] Ibid., chap. 3.
[g] Laws 1861–62, chap. 1.

following year, was changed to a tax of 2½ per cent on gross receipts, and the amount of the flat tax was increased to $165.[a]

There was no change other than an increase in rates in the taxation of railroad and canal companies between 1860 and 1865. During the 1865–66 legislative session, however, the passenger and freight taxes were replaced by a tax of two-fifths of 1 per cent on gross receipts.[b] Four years later[c] this was replaced by a tax of 2½ per cent on net earnings. From the next year, however, dates the beginning of the present method. Railroad and canal companies were taxed for state purposes at the rate applied on other property and in addition were required to pay a net earnings tax of one-half of 1 per cent on earnings in excess of $1,000.[d] In 1871 the earnings system of taxation was extended to express companies,[e] and in 1872 to sleeping car and steamboat companies.[f]

With but slight changes, the method of taxing telegraph companies continued until 1872, when they were subjected to the state property tax rate and were required by statute to be assessed at $125 per mile. In addition, a flat tax of $200, and a gross-earnings tax of 1½ per cent were imposed.[f] During this year also there was substituted for the net-earnings tax on railroad and canal companies a tax on the market value of indebtedness payable from interest.[g] This tax was changed in 1874 to a tax of 1 per cent on net receipts.

Previous to 1877 the assessment of the property tax was based on the valuation as sworn to by the companies. In this year the State Board of Public Works was required to assess the property of railroad and canal companies upon the best obtainable information. In 1882 telegraph property for the first time was made subject to county taxation.[h] During the same year a provision for the taxation of telephone companies was provided[i] and they were made taxable in the same manner as telegraph companies. In 1884 the State Board of Public Works was required to assess the

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[a] Laws 1863, chap. 1.

[b] Laws 1865–66, chap. 3.

[c] Laws 1869–70, chap. 226.

[d] Laws 1870–71, chap. 193.

[e] Ibid., chaps. 72, 192.

[f] Laws, extra session, 1872, chap. 385.

[g] It was held that the State could not tax the bonds held by persons living out of the State. Commonwealth *v.* Chesapeake & Ohio R. R. Co., 68 Va., 344 (1876).

[h] Laws 1881–82, chap. 162.

[i] Laws, extra session, 1882, chap. 119.

property of express, sleeping car, and steamboat companies.[a] In 1880, for the first time since 1856, railroad property was made subject to county taxation.[b]

In 1890 the supplemental taxes applicable to express and telephone companies were changed. Under the 1890 act express companies paid a tax of flat amount, namely, $500, if operating on more than 1,000 miles of railroad track in the State, or $300 if operating on less; and telephone companies paid a tax of $1.50 per instrument.[c]

In 1902 both railroad and canal property was made subject to county, city, town, and district taxation,[d] and the supplemental tax on telegraph companies was changed to a pole-mileage and gross-earnings tax.[e]

The duty of assessing the property of public-service corporations was, in 1903, transferred from the Board of Public Works to the State Corporation Commission.[f] The annual charter tax or state registration fee[g] was imposed on all corporations, and a tax on gross transportation receipts, as at present,[d] replaced the tax on net receipts of railroads. Provision was also made during this year for the local taxation of the property of express and of steamboat companies, based on assessments by the State Corporation Commission. Express companies were made subject to a supplemental graduated state tax based on railroad mileage, steamship companies to an income tax of 1 per cent on net receipts in excess of $600 (changed in 1908 to one-half of 1 per cent on gross receipts),[h] and telegraph and telephone companies to taxes based on pole mileage and on gross receipts.

In 1908 the state property tax on sleeping car companies was abolished and the present law taxing them according to mileage of railroad track over which they traveled was enacted.

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[a] Laws 1883–84, chap. 450.

[b] Laws 1879–80, chap. 106; see also Laws 1881–82, chap. 221.

As previously noted, railroads were subject to local assessments from 1853 to 1855, but, due to the early custom of exempting railroad property from taxation by means of special charters, there was probably very little railroad property taxable during those two years.

Under all acts subjecting property to county levies previous to the constitution of 1870, the levy was limited to those subjects assessed with state taxes within the county, and the county levies were made up from the assessment books as made out by the local commissioners of revenue for state purposes. Virginia & Tennessee R. R. Co. *v.* Washington County, 71 Va., 471, 473 (1878).

[c] Laws 1889–90, p. 208.

[d] Laws 1901–2, chap. 677.

[e] Ibid., chap. 662.

[f] Laws 1902–3–4, chap. 147.

[g] Constitution of 1902, sec. 157.

[h] Laws 1908, chap. 165.

The property of water, heat, light, and power companies was made subject to assessment by the State Corporation Commission in 1910, and in addition they were taxed on gross receipts.[a]

Until 1912 all of the local tax on rolling stock of any domestic railroad was collected and retained by the county or city wherein the principal office of the railroad was located.

Inequality of Assessments.

The problem of inadequate and irregular assessment of real and personal property has been the subject of comment by the attorney general, who, in his 1907 report, called attention to a rate case heard by the State Corporation Commission, wherein the evidence submitted developed the fact that the value of railroad property in the State as indicated by capital invested, or by the aggregate value of stock and bonds, or by the net earnings, generally was very much more than the sum at which it was assessed for taxation.[b] He also called attention in his 1909 report to the very imperfect and inefficient statutes in reference to the assessment of both real and personal property, which, according to the report, can only be improved by radical, but statesmanlike, amendment.[c] In a paper read before the National Tax Association in 1911 it was stated that the assessment of lands in Virginia varied from 5 to 65 per cent of fair market value.[d]

The committee on tax revision, appointed in 1914, however, found that the average assessment of real estate is about one-third its true value, and that the ratio of assessed value to true value varies widely as between the different counties, being as low as 12.5 per cent in one county and as high as 57.9 per cent in another.[e] The committee also developed the fact that real estate in cities and towns is assessed at a much higher percentage of true value than real estate situated in rural districts.

Special Temporary Commissions.

The constitution of 1902 contains the following provision:[f] "The general assembly may, after January 1, 1913, segregate for the purposes of taxation, the several kinds or classes of property,

[a] Laws 1910, chap. 61.

[b] Report of Attorney General, 1907, pp. 18–20.

[c] Ibid., 1909, p. 56.

[d] Taxation Conditions in Virginia, Douglas S. Freeman, Fifth Annual Conference of National Tax Association, 1911, p. 68.

[e] Report of Joint Committee on Tax Revision, 1914, p. 11.

[f] Constitution, Art. XIII, sec. 169.

so as to specify and determine upon what subjects, state taxes, and upon what subjects, local taxes, may be levied." The legislature of 1910 made provisions [a] for the appointment of a special or temporary tax commission to report on the revision of the tax and assessment laws, "and especially to investigate and report upon the practicability and advisability of the segregation of subjects of taxation in Virginia for the purpose of state and local taxation, respectively."

The report of the commission [b] in 1911 is preceded by a brief summary of the commission's recommendations, which are, in part, as follows:

"To create a permanent unpaid tax commission of nine existing state officers with a paid executive officer, which commission shall have power (1) to equalize assessments among the counties and cities of the State by fixing a standard valuation for each class of tangible personal property, an average per acre valuation for each county, and average frontal valuations for each city; (2) to remove commissioners of the revenue for violation of the law or for neglect of duty; (3) to formulate reasonable rules and regulations for the uniform assessment of improvements and for the general enforcement of the revenue law.

"To require the statement of the exact valuable consideration involved in the transfer of real property in order to form a basis for an average per acre or frontal valuation.

"To abolish land assessors as separate officers of the law and to provide for the assessment of lands and improvements by commissioners of the revenue.

"To reduce the state tax on stocks, bonds, and other evidence of debt to 25 cents on the hundred dollars' valuation and to limit the local tax to the same amount.

"To place all public-service corporations on a gross-earnings basis of taxation as soon as the decisions of the Federal courts will warrant such action.

"To require an accurate report of the gross earnings of all telephone and telegraph, express, and passenger-car service companies.

"To increase the tax of passenger-car service companies from $2 the mile to $4 the mile; and to increase the tax on express companies from $6 the mile operated to $7.50 the mile operated, requiring the latter to pay a tax for each line of steamships operated over the same course.

"To impose a tax on the property of freight-car service corporations used in the State.

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[a] Laws 1910, chap. 147.

[b] Report of Tax Commission to the General Assembly, 1911, p. vii.

"To require every firm, corporation, etc., operating in Virginia to report to the tax commission the amount of all salaries, fees, etc., paid by such firm, etc., to any citizen of Virginia in excess of $1,000 the year, said reports to be forwarded to the commissioners of the revenue and to be prima facie evidence of assessment with income in that amount.

"The amendment of the mineral-assessment law to provide (*a*) that the assessment be made in every year by the mineral assessor and the commissioner of the revenue; (*b*) that in case of disagreement between the assessing officers, the opinion of the mineral assessor shall prevail, subject to appeal; (*c*) that notice of appeal from any assessment be served on the corporation commission.

"To equalize assessments and to bring them to the constitutional valuation, with a view to the ultimate separation of the sources of local and state revenue."

Very little legislation bearing on the subject of taxation, however, has been enacted since the submission of these recommendations. Probably the most important was the enactment of a law [a] authorizing the appointment of a special joint legislative committee of 10 members for the purpose of making a thorough study of the taxation system of the State and to report its findings to the governor, members of the legislature, and other state and local officers.

This committee, in its report to the governor,[b] proposed two general systems of taxation. One system recommended by a minority provides for partial segregation of sources. Another recommended by a majority provides for the establishment of a state tax commission.

To carry out the recommendations of the minority, a bill for the establishment of an ex officio state board of taxation, consisting of the governor, chairman of the State Corporation Commission, and the auditor of public accounts, and proposing broad powers therefor, was submitted.[c]

Among other powers and duties the proposed board is to have general supervision of the administration of the laws relating to the assessment, collection, and distribution of the revenue of the State and its subdivisions and to keep accurate accounts of the gross amounts collected and distributed by each county, city, and town, of the aggregate assessment of property therein, and of the sales and transfers of real estate, including the actual consideration involved, and for that purpose may require of each treasurer,

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[a] Laws 1914, chap. 212.

[b] Report of Joint Committee on Tax Revision, Virginia, 1914, pp. 6, 7.

[c] Adopted. Act approved Mar. 17, 1915.

clerk of court, or other local or state officer such reports as it may deem advisable; to annually make an estimate of the probable revenues that will be available for state purposes during the next year, and if such estimates shall be in excess of the expected available revenues for state purposes, to call upon the counties and cities of the commonwealth to contribute to the state treasury a sufficient sum to meet the requirements of the state government in excess of the expected revenues, the tax for this purpose being uniformly based on assessed value of property in the respective counties and cities (in case the estimated state revenues are deemed by the board to be sufficient to meet the estimated expenses of state government, the board is to make no requisition upon the counties or cities); to issue writs and orders compelling attendance and testimony of witnesses, the production of documentary evidence relating to assessment and taxation and for the purpose of carrying out its mandates; to make a comprehensive report to the general assembly at each regular session thereof, showing in detail the operations of the board since its last report, giving a general summary of the tax conditions throughout the commonwealth, and making such recommendations for legislative action as may tend to remove inequalities and other imperfections in the manner of assessing and collecting state and local taxes.

To carry out the recommendations of the majority, a bill was submitted which proposes a permanent tax commission composed of three members, appointed by the governor for a term of six years, and with proposed duties which are in part as follows:

To exercise general supervision over all officers having duties pertaining to taxation in the State; to prescribe the form of books and schedules to be used in the assessment and collection of taxes, and to install a uniform system of accounts to be used by revenue officials; to supervise the administration of the assessment laws of the State with a view to ascertaining the best method of reaching all property, of effecting equitable assessment, and of avoiding conflicts and duplication of taxation of the same property; to recommend to the governor measures intended to promote uniform assessment, just rates, and harmony and cooperation among all officials connected with the revenue system of the State; to furnish assessors and commissioners of revenue a classification of property, both real and personal, for the purpose of uniform valuation; to collect information relating to the value and ownership of real and personal property, with a view to instructing, aiding,

and checking assessors and commissioners of revenue; to make all assessments for such taxes as are now or may hereafter be made payable directly to the commonwealth; to certify for collection the amount of such taxes to the auditor of public accounts; to investigate and supervise the enforcement of the laws relating to rates, fees, and charges for mercantile, professional, and other licenses; and to issue writs and orders compelling testimony of witnesses, the production of documentary evidence, etc.

The report also presents several additional bills proposing correction of various defects in the present general taxation system of the State.

Bibliography.

The following is a list of the more important publications, in addition to the constitution, the statutes, and the court reports, of value in the study of corporate taxation in Virginia:

Annual reports of the State Corporation Commission.
Annual reports of the Attorney General.
Governor's messages.
Inaugural Address of Governor, February, 1910.
Report of Tax Commission, 1911.
Report of Committee on Tax Revision, 1914.
Taxation Conditions in Virginia, Douglas S. Freeman, Fifth Annual Conference of National Tax Association, 1911.

WEST VIRGINIA.

I. GENERAL VIEW.

Chief Features.

First. The application of the general property tax to practically all classes of property.

Second. The assessment of public-service corporations by a central state board and the state collection of the general property tax, from such corporations for both state and local purposes.

Third. The classification of corporations by statute as resident and nonresident domestic, and foreign.

General Property Tax.

Operating property of public-service corporations is assessed by the State Board of Public Works and the general property tax on such corporations for state and local purposes is paid into the state treasury. All other taxable property is assessed locally, and the tax for state and local purposes is paid locally.

Taxes Supplemental to the General Property Tax.

Domestic corporations pay to the State for state purposes an annual capital-stock or license tax based on authorized capital stock, and certain foreign corporations pay a similar tax based on the proportion of capital stock represented by property owned and used in the State. Other foreign corporations pay to the State for state purposes a mileage tax.

Foreign Corporations.

There is no difference in the method of taxing the property of foreign and domestic corporations, but there are some differences in the kinds of supplemental or license taxes imposed upon resident and nonresident corporations.

Stockholders and Bondholders.

Stock in corporations whose property is taxed is not taxed in the hands of holders. Bonds of domestic and foreign corporations are taxable to holders.

Administration.

An ex officio board, the Board of Public Works, consisting of the governor, secretary of state, state auditor, superintendent of free schools, state treasurer, attorney general, and commissioner of agriculture, assesses the operating property of public-service corporations [a] and apportions such assessments to the counties.

The state tax commissioner, appointed by the governor for a term of six years, assesses the inheritance tax, [b] determines the income of hydroelectric companies, [c] examines and tabulates the returns submitted by public-service or public-utility corporations to the board of public works, and when requested attends the meetings of such board and renders such assistance as may be required. It is also his duty to inspect the work of, confer with, and offer suggestions to local tax officials, and to cause prosecutions for any violations of the revenue laws. [d]

County assessors and assistant county assessors are required to assess the property of individuals and of corporations other than those assessed by the Board of Public Works. [e]

Equalization of assessments between counties [f] is by the Board of Public Works. Equalization of assessments within the counties is by the county assessors and assistant county assessors convened in joint meeting with the county clerk as an advisory member. [g]

Appeals from assessments made by the state board may be taken to the circuit court. [h] Appeals from county assessors lie to the county court. [i]

Amounts of taxes due the localities are determined by applying the local rates to the amounts previously apportioned. For this purpose such apportionments and rates for county and district purposes are certified to the state auditor by county clerks, for free school and building purposes by the board of education, and for municipal purposes by the city clerk or other recording officer. [j]

Collection of the general property tax paid by public-service or public-utility companies for both state and local purposes; of the capital stock or annual license tax paid by foreign corporations; and of the mileage taxes paid by certain public-service or public-

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[a] Code, secs. 768–778, as amended, Laws 1913, chap. 30.
[b] Code, secs. 1077, 1080.
[c] Laws 1913, chap. 11, sec. 18.
[d] Code, secs. 673, 674.
[e] Code, sec. 696.
[f] Code, sec. 694.
[g] Code, sec. 702.
[h] Code, sec. 779.
[i] Code, sec. 815.
[j] Code, sec. 781.

utility corporations is by the state treasurer.[a] Collection of the capital-stock or annual license tax paid by domestic corporations is by the state auditor.[b] Collection of the general property tax on all property not assessed by the Board of Public Works is by county sheriffs[c] and city or town treasurers.

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION.[d]

"Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property, from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious, or charitable purposes, all cemeteries, and public property may, by law, be exempted from taxation. The legislature shall have power to tax, by uniform and equal laws, all privileges and franchises of persons and corporations."[e]

"The legislature may, by law, authorize the corporate authorities, of cities, towns, and villages, for corporate purposes, to assess and collect taxes; but such taxes shall be uniform, with respect to persons and property within the jurisdiction of the authority imposing the same."[f]

"The legislature shall levy an annual capitation tax of one dollar upon each male inhabitant of the State who has attained the age of twenty-one years, which shall be annually appropriated to the support of free schools. Persons afflicted with bodily infirmity may be exempted from this tax."[g]

"The power of taxation of the legislature shall extend to provisions for the payment of the state debt and interest thereon, the support of free schools, and the payment of the annual estimated expenses of the State; but whenever any deficiency in the revenue shall exist in any year, it shall, at the regular session

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[a] Code, sec. 785, as amended by Laws 1907, chap. 48; Code, sec. 1052; Laws 1907, chap. 82, sec. 145.

[b] Code, sec. 1051.

[c] Code, sec. 822.

Sources of revenue in West Virginia:

Municipal and local districts.—(*a*) General property tax; (*b*) licenses; (*c*) fines, fees, etc.

County.—(*a*) General property tax; (*b*) licenses; (*c*) poll tax; (*d*) fines, fees, etc.

State.—(*a*) General property tax; (*b*) poll tax; (*c*) inheritance tax; (*d*) corporation taxes; (*e*) licenses; (*f*) fines, fees, etc.

[d] Except as otherwise indicated, references are to the constitution of the State as contained in West Virginia Code, Annotated, 1906.

[e] Constitution, Art. X, sec. 1.

[f] Ibid., Art. X, sec. 9.

[g] Ibid., Art. X, sec. 2.

thereof held next after the deficiency occurs levy a tax for the ensuing year, sufficient with other sources of income, to meet such deficiency, as well as the estimated expenses of such year." [a]

Among other items, "the proceeds of any taxes that may be levied on the revenues of any corporation * * * shall be annually applied to the support of free schools throughout the State." [b]

"The legislature shall not pass local or special laws * * * releasing taxes." [c]

In each county, the "county court," composed of three commissioners elected by the voters of the county, has authority to "levy and disburse the county levies." [d]

STATUTES. [e]

General Property Tax.

Domestic and foreign corporations, except public-service corporations, pay locally the general property tax for state and local purposes. [f] Operating property of public-service corporations is assessed by the Board of Public Works. All other property is assessed locally for state and local purposes. Taxable property is assessable at "true and actual value." [g] This term is defined by statute as "the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold and not the price which might be realized if such property was sold at a forced sale." In practice property generally is assessed at about 70 per cent of actual value. [h]

The statutory definition of real property includes lands, tenements, and hereditaments, and all rights and interests therein, except chattel interests and chattels real not included in the valuation of the land. [i] The statutory definition of "personal property" includes all fixtures attached to the land, if not included in the valuation of the land; all things of value movable and tangible; all chattels real and personal; all money, credits and investments. [i] Where a person or corporation other than

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[a] Constitution, Art. X, sec. 5.
[b] Ibid., Art. XII, sec. 4.
[c] Ibid., Art. VI, sec. 39.
[d] Ibid., Art. VIII, secs. 22–24.
[e] Except as otherwise indicated, references herein are to West Virginia Code, Annotated, 1906.
[f] Code, secs. 761, 762, 778, 781, 791.
[g] Ibid., sec. 696, as amended Laws 1907, chap. 80.
[h] Letter of State Tax Commissioner, Dec. 9, 1914.
[i] Code, sec. 745.

the owner of the surface land becomes the owner of any other estate in the coal, oil, gas, ore, etc., on the property, the respective interests are assessed to the several owners thereof.[a] "Money" includes not only coin, but all notes, tokens or papers circulating as money or currency, and deposits payable in money on demand. The term "credits" includes all claims and demands owing upon bonds, notes, certificates, book accounts or otherwise, and whether due or not, whether payable in money, property, labor, or services. "Investments" include stocks, bonds, and securities of the United States,[b] this State, or any other State or government, or of any city, town, railroad or other corporation; and any share, portion, interest, or stock in the capital, joint fund, assets, or profits of any company, whether incorporated or not, or in a steamboat or other vessel,[c] or in any business or undertaking.[d]

Personal property of individuals, as a rule, is assessed and taxed at the residence of the owner, but personal property belonging to residents of this State which is permanently located in another State and there subject to taxation and actually taxed is not taxable in West Virginia.[e] Moneys, credits, and investments subject to taxation are listed in the district in which the owner resides whether the property involved or the evidence thereof be in or

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[a] Code, sec. 723.

Under the usual method employed by operators of coal mines a coal company contracted with the owner of land to mine, etc., coal therefrom for 30 years, with privilege of renewal, paying therefor 10 cents per ton mined. The state tax commissioner claimed this mining right was a chattel real and taxable as personal property to the coal company, asserting further that there was a value of $200,000,000 in mining leaseholds in the State which had not been charged with taxes. The company claimed that its right was not a chattel real, not personalty, but real estate, and could not be charged to it as personal property, but could be charged only as real estate to the owner of the land itself, and that the charge of the tax to the owner covers, includes, the right of the company.

Held that such interests are leaseholds and taxable as chattels real to the lessees. Chattels real, not being "movable and tangible" and not being mentioned for taxation in the prior law, were not taxable. The 1905 law mentions them by name. The statute has never in words required chattels real to be separately assessed until the act of 1905; that act makes them specific subjects of taxation. No matter how many quantities or interests in land there may be, the State can, if it choose, tax each separately. Harvey Coal & Coke Co. *v.* Dillon, 59 W. Va., 605 (1905).

[b] Making the word "investments" include securities of the United States does not tax those things which are exempt. It only means to define "investments" by saying what it covers, and does not per se assess taxes. Old Nat'l. Bank *v.* State, 58 W. Va., 559 (1905).

[c] Owners of ships and vessels may be taxed for the support of the state government to the extent of their interest in the same, for the value of the property. Assessments of the kind, when levied for municipal purposes, must be made against the owner of the property and can only be made in the municipality where the owner resides. Transportation Co. *v.* Wheeling, 99 U. S., 273, 279 (1878).

[d] Code, sec. 746.

[e] Ibid., sec. 747.

out of the State.[a] Capital, money, and intangible property, employed in any trade or business other than agriculture, is assessed for taxation in the taxing district wherein the principal office for the transaction of business of the corporation is located, or if there be no such office, then in the district where the operations are carried on.[b] All property is assessed annually.[c]

Debts are deductible from money, credits, or investments only.[d]

Property used for public, educational, library, religious, hospital, burial, and charitable purposes is exempt from taxation.[e]

Capital Stock or Annual License Tax.

Domestic corporations are required to pay, in addition to the general property tax, an annual license tax to the State for state purposes, based on authorized capital stock. A domestic corporation is defined as:

(*a*) One incorporated under the laws of this State;

(*b*) One incorporated under the laws of Virginia prior to June 20, 1863, and which has its principal place of business and chief works, if it have chief works, in West Virginia.

A resident corporation is defined as a domestic corporation whose principal place of business and chief works, if it have chief works, are located in the State.[f] Every such corporation is required to pay an annual license tax which varies from $10, when the authorized capital stock is $5,000 or less, to $170, when the authorized capital stock is $1,000,000, with $60 additional tax for each $1,000,000 additional capital stock.[g]

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[a] Code, sec. 748, as amended by Laws 1907, chap. 80.

[b] Ibid., secs. 744, 748, as amended by Laws 1907, chap. 80.

[c] Ibid., sec. 698.

[d] Ibid., sec. 751, as amended by Laws 1907, chap. 80.

[e] Ibid., sec. 741.

[f] Ibid., sec. 1046.

[g] Ibid., sec. 1048, as amended by Laws 1909, chap. 68.

When the authorized capital stock is—

$5,000 or less, the tax is	$10
More than $5,000 and not more than $10,000	15
More than $10,000 and not more than $25,000	20
More than $25,000 and not more than $50,000	25
More than $50,000 and not more than $75,000	45
More than $75,000 and not more than $100,000	50
More than $100,000 and not more than $125,000	55
More than $125,000 and not more than $150,000	60
More than $150,000 and not more than $175,000	70
More than $175,000 and not more than $200,000	75
More than $200,000 and not more than $300,000	90
More than $300,000 and not more than $400,000	105
More than $400,000 and not more than $500,000	120
More than $500,000 and not more than $1,000,000	170

If more than $1,000,000, $170, and $60 on each $1,000,000 or fraction thereof in excess of $1,000,000.

A nonresident corporation is defined as a domestic corporation whose principal place of business or chief works is located without the State. Every such corporation is required to pay to the State for state purposes an annual license tax which varies from $15, when the authorized capital stock is $10,000 or less, to $675, when the authorized capital stock is more than $4,000,000, with $50 additional tax on each $1,000,000 authorized capital stock in excess of $4,000,000.[a]

Every foreign corporation, except express, telegraph, and telephone companies owning lines in the State,[b] pays an annual

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[a] Code, sec. 1050.

When the authorized capital stock is—

$10,000 or less, the tax is	$15
More than $10,000 and not more than $25,000	20
More than $25,000 and not more than $50,000	30
More than $50,000 and not more than $75,000	40
More than $75,000 and not more than $100,000	50
More than $100,000 and not more than $1,000,000	50
and an additional 25 cents on each $1,000 or fraction thereof in excess of $100,000.	
More than $1,000,000 and not more than $2,000,000	275
and an additional 20 cents on each $1,000 or fraction thereof in excess of $1,000,000.	
More than $2,000,000 and not more than $4,000,000	475
and an additional 10 cents on each $1,000 or fraction thereof in excess of $2,000,000.	
More than $4,000,000	675
and an additional $50 on each $1,000,000 or fraction thereof in excess of $4,000,000.	

The legislature of 1885 imposed a much heavier license tax on domestic corporations having their principal place of business or chief works outside the State than on those having the same located within the State. The appellant company, a West Virginia corporation with principal office, place of business, and chief works in New York, contended that the provision violated the uniformity clause of the state constitution and also the Fourteenth Amendment of the United States Constitution.

The court held that as to the two classes of domestic corporations, resident and nonresident, one contributes to the wealth and development of the State, while the other contributes nothing in this respect. One class subjects its property to ordinary taxation within the State, the other does not. It is necessary to classify them in order to make each bear its proper share of the burden of taxation, and the classification is made for that purpose and no other. All such classifications are held to be legal, for uniformity and equality in the imposition of the burden of taxation can only be attained and effectuated by such classification. Blue Jacket Consolidated Copper Co. *v.* Scherr, Auditor, 50 W. Va., 533 (1901).

[b] There is no law specifically exempting such companies from payment of the tax imposed under sec. 1052, Code 1906, but the state auditor has ruled and the practice has been that where express, telegraph, and telephone companies have mileage in this State such companies pay their license taxes under sec. 145, chap. 82, Acts 1907, and are excused from capital-stock tax. Such telegraph and telephone companies

license tax based on the proportion of the capital stock represented by its property owned or used in the State. If the assessed value of its property located in the State amounts to $5,000 or more, the rates prescribed for resident corporations apply; but if the assessed value of its property in the State amounts to less than $5,000, then the rates prescribed for nonresident corporations apply. In any event, each such corporation is required to pay an annual license tax of not less than $100. These corporations make annual reports to the auditor, who assesses and fixes the amount of the license tax and notifies every such corporation of the amount assessed.[a]

Steam and Electric Railroads.

Domestic and foreign steam and electric railroads pay to the State for state and local purposes the general property tax on operating property, including franchise value, and locally for state and local purposes the general property tax on property not used in operation.[b] In addition, they pay to the State for state purposes the capital-stock or annual license tax.[c]

Operating property of railroads is assessed by the Board of Public Works, assisted by the state tax commissioner.[d] All other property is assessed locally.[e]

For assessment purposes, the operating property of railroads may be said to be classified as distributive and localized. Distributive property consists of franchise value, rolling stock, roadbed, rails, culverts, and all strictly right-of-way superstructure. Localized property includes terminals, depots, shops, and other railroad buildings, and grounds, tools, machinery, etc. Railroad bridges charging separate fares or tolls are assessed by the Board of Public Works, but such assessments are made independently of other railroad property.[f]

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as are foreign corporations admitted to do business in West Virginia, and which own no mileage in the State, pay license taxes under sec. 1052, Code 1906.

Most, if not all, express companies doing business in this State are unincorporated, and therefore do not fall in class of companies mentioned in sec. 1052 of the Code.

The American Telegraph & Telephone Co., a foreign corporation, owns no lines in West Virginia but operates over the Chesapeake & Potomac. They are taxed under sec. 1052.

[a] Code, sec. 1052.

[b] Ibid., secs. 783–788.

[c] Ibid., secs. 1046; 1048, as amended Laws 1909, chap. 68; 1050; 1052.

[d] Ibid., secs. 674, 778.

Report of tax commissioner, 1906, p. 31.

[e] Ibid., sec. 791.

[f] Code, sec. 770, as amended Laws 1907, chap. 80; 778.

The assessment of railroad property by the Board of Public Works is based largely on data submitted by the tax commissioner, which data includes the annual reports from railroads and such other information as the tax commissioner may be able to obtain.[a]

The method of assessment consists in valuing each railroad system as a unit, namely, by finding the aggregate value of the entire system. This is determined by a consideration of the market value of stock and bonds, the reproduction cost, the earnings and profits, the character of business, and other factors which may add to or detract from the supposed aggregate value.[b]

Having thus ascertained the aggregate value of the entire system, the value taxable in West Virginia is then determined by taking that proportion of the aggregate value which the main-track mileage within the State bears to the total main-track mileage wherever located.[c] From this is deducted the value of the localized property, and the remainder equals the value of distributive property. The value of localized property is assigned directly to the counties wherein it is located, and the value of distributive

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[a] Code, secs. 768, as amended Laws 1909, chap. 67; 769; 778. Proceedings of Fourth Annual Conference of National Tax Association, 1910, pp. 257 et seq.

[b] "To ascertain the true and actual value of the property of a railroad company, for instance, the board took into consideration the cost of reproducing such property, its earnings and profits, the character of its business, its location, the par and market value of its stocks and bonds, and, so far as it could, every element and condition, which added to or detracted from its supposed value. This it was certainly authorized to do under the law, as it can not be well understood how the board could assess railroad property at its true and actual value unless it took into consideration each and every element which went to make up the railroad as a going and operating unit. * * *

"The board treated each railroad as a unit, following the idea laid down by Justice Miller of the Supreme Court of the United States, in the Railroad Tax Cases (92 U. S., 608, 1875). * * *

"It is also contended that the assessment of railroads for the year 1906 covers the franchise values of railroads, which, it is claimed, is not authorized by our present statute. It is contended that while our constitution provides that the legislature may tax the franchises of corporations, that the legislature has not made provision that it should be done, and therefore the values placed upon the railroads, being the market value of properties, including every element which goes to make up values, would necessarily include its franchise and rights to do business, and is therefore illegal. This theory is not borne out by a fair and reasonable construction of the statute. The legislature having provided that railroads be assessed at their true and actual value; that is, at what they will sell for in the market, would certainly mean that if the franchises had any value that it should be included in the assessment, and this theory the board of public works accepted as a proper construction of the law, and it is borne out by the decisions of many courts on the subject." Report of State Tax Commissioner, 1905–6, pp. 29–32.

[c] Interview with state tax officials, December, 1914.

property is apportioned among the various counties through which the road operates on the basis of the mileage value of main track, side track, and branches located in each.[a] A reapportionment is then made on a similar basis to the municipalities and minor taxing districts by the county court in each county.[b]

Each railroad company is required to report annually to the state tax commissioner complete data with respect to its capitalization, earnings, profits, and the value and location of its property. The tax commissioner is required to examine and submit these reports to the board of public works, with such supplemental data as he may be able to obtain.[c]

Telegraph and Telephone Companies.

Domestic and foreign telegraph and telephone companies pay to the State for state and local purposes the general property tax on property used in operation.[d] In addition, domestic and certain foreign corporations of these classes pay to the State for state purposes the capital-stock or annual license tax,[e] and foreign corporations owning lines within West Virginia pay a wire mileage tax to the State for state purposes.[f]

Assessments of these companies are made by the Board of Public Works under similar law and in practically the same manner as described above under railroads.[g] After the assessed valuation of the property within the State has been determined, it is then apportioned to the counties by the state board in propor-

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[a] "I recall one railroad valued at over seventy-five millions of dollars. We distributed that valuation largely according to the method suggested by Mr. Polleys. For instance, take the buildings along the line. We give to each taxing district in which these buildings are situated the value of that particular building, wherever found; we give to each taxing district the value of the tools and the value of the machinery in which they are situated. After we take that from the total, then we give the remainder of the valuation to the different districts according to the mileage situated in the districts, and we include in that the main line, second track, and branches, that gives to the taxing district that has the terminal the benefit of the track in that terminal." (Mr. T. C. Townsend, Proceedings of Fourth Annual Conference of National Tax Association, 1910, p. 259.)

[b] Code, sec. 780.

[c] Ibid., secs. 768, as amended Laws 1909, chap. 67; 769; 778. Proceedings of Fourth Annual Conference of National Tax Association, 1910, pp. 257, et seq.

[d] Ibid., sec. 785, as amended Laws 1907, chap. 48.

[e] Ibid., secs. 1046; 1048, as amended Laws 1909; chap. 68; 1050; 1052.

Domestic and foreign telegraph and telephone companies pay also to the State a small annual fee toward the maintenance of the public-service commission. Laws 1913, chap. 9.

[f] Laws 1907, chap. 82, secs. 141–146.

[g] Code, secs. 774, 778, 780, 781, 783, 788, 789.

tion to the physical property of telegraph and telephone companies situated in each, and a reapportionment by county courts on the same basis is made to the localities within the counties.[a] Property not used in operation is assessed locally.[b] The rate of the mileage tax paid by foreign telegraph and foreign telephone toll companies owning lines within the State is $1 per mile of pole line.[c] The minimum amount of this mileage tax is $100.[d] Foreign corporations which own no lines within the State pay the minimum rate, $100, prescribed under the capital-stock tax.[e]

Each company of the above-named classes is required to report annually to the state tax commissioner complete data with respect to capitalization, character and mileage of poles and lines, and any other information which may be of use to the Board of Public Works in determining the true and actual value of the property.[f]

Express, Car, and Pipe-Line Companies.

Domestic and foreign express, car, and pipe-line companies pay to the State for state and local purposes the general property tax on all property used in operation,[g] and locally the general property tax for state and local purposes on property not used in the business.[b] In addition, domestic and foreign car and pipe-line companies and domestic express companies pay to the State for state purposes the capital-stock or annual license tax[h] and foreign express companies a route mileage tax.[i]

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[a] Code, secs. 780, 781.

[b] Ibid., sec. 791.

[c] There is no law specifically exempting such foreign corporations from the payment of the capital-stock tax (Code, 1906, sec. 1052), "but the state auditor has ruled and the practice has been that where express, telegraph, and telephone companies have mileage in this State such companies pay" the license tax above described. Interview with state tax officials, December, 1914.

[d] Laws 1907, chap. 82, secs. 141–146.

[e] Code, sec. 1052.

[f] Ibid., secs. 768, 774.

[g] Ibid., sec. 785, as amended Laws 1907, chap. 48.

[h] Ibid., secs. 1046; 1048, as amended by Laws 1909, chap. 68; 1050; 1052.

Express, car, and pipe-line companies pay also to the State a small annual fee toward the maintenance of the State Public Service Commission. Laws 1913, chap. 9.

[i] Laws 1907, chap. 82, sec. 145.

"Most, if not all, of the express companies doing business in this State are unincorporated, and therefore do not fall in the class of companies mentioned in Code, sec. 1052." This section of the Code applies the capital-stock tax. Interview with state tax officials, December, 1914.

The assessments of express and pipe-line companies are made by the same board in practically the same manner and under authority of the same law which provides for the assessment of railroads. Apportionment of the value of pipe-line property is made by the state board to the counties in proportion to the value of physical property located in each. Reapportionment is then made on the same basis by the county board to the municipalities and other minor taxing districts. Apportionment of valuations of express companies to both the counties and minor taxing districts is made by the board according to the track mileage used.

Car line companies are assessed by the state board on the value of the average number of cars used in the State.[a] These values, when determined, are arbitrarily apportioned by the board to the counties.

Each company of the above-named classes is required to report annually to the state tax commissioner complete data with respect to capitalization, earnings, property owned, and any other information which may be of use to the Board of Public Works in determining the true and actual value of the property.[b]

The rate of the route mileage tax paid by foreign express companies is $1.50 per mile of road over which such companies carry expressage.[c] The minimum route mileage tax on express companies is $100.

Gas, Water, and Electric Light Companies.

Domestic and foreign gas, water, and electric light companies pay to the State for state and local purposes the general property tax on property used in operation, including franchise value,[d] and locally the general property tax for state and local purposes on all property not used in the business.[e] In addition they pay to the State for state purposes the capital-stock or annual license tax.[f]

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[a] Example: All cars operated in this State by a given company make during the year 365,000 miles; they make in one day 1,000 miles; average mileage per car per day, 150 miles; number of cars assessable in State of West Virginia, 6⅔; value per car, $750; total assessment in State, $5,000. Interview with state tax officials, 1914.

[b] Code, secs. 768, as amended Laws 1909, chap. 67; 771, 772, 773.

[c] Laws 1907, chap. 82, sec. 145.

[d] Code, sec. 785, as amended Laws 1907, chap. 48.

[e] Ibid., sec. 791.

[f] Ibid., secs. 1046; 1048, as amended Laws 1909, chap. 68; 1050; 1052.

Companies of this class pay also to the State a small annual fee toward the maintenance of the State Public Service Commission. Laws 1913, chap. 9.

Assessment of operating property is made by the Board of Public Works.[a] It is based on annual reports from the companies and upon other information gathered by the state tax commissioner.[b] The method of assessment is to determine the valuation of the property as a whole, no attempt being made to value the items of property separately, but all elements which influence value, such as stock, bonds, earning capacity, cost of construction, etc., are given consideration. Apportionment to the counties is made by the Board of Public Works in proportion to the value of physical property located in each, and by county courts to the localities within the county on the same basis.[c]

Each company of the above-named classes is required to report annually to the state tax commissioner complete data as to capitalization, pipes, pumping stations, and property of every kind and any other information which may be of use to the Board of Public Works in determining the true and actual value of the property.[b]

Manufacturing, Mercantile, Mining, and Miscellaneous Corporations.

Domestic and foreign manufacturing, mercantile, mining, and miscellaneous corporations pay locally the general property tax for state and local purposes. In addition they pay to the State for state purposes the capital-stock or annual license tax.[d] Real and tangible personal property is assessed where located, and intangible property is assessed at the principal office or place of business of the corporation.[e] The local assessor in making assessments relies largely upon detailed annual reports from the corporations.

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[a] Code, secs. 772, 778; Laws 1913, chap. 9.

[b] Ibid., sec. 768, as amended Laws 1909, chap. 67; 772; 778; Laws 1913, chap. 9.

[c] Ibid., secs. 768, 780, 781.

[d] Ibid., secs. 1046; 1048, as amended Laws 1909, chap. 68; 1050; 1052.

[e] Ibid., sec. 762.

Plaintiff, a domestic corporation, engaged in mining and marketing coal had its chief works and general offices in Logan County, where it mined coal which was transported by rail to Huntington in Cabell County, thence in barges by means of towboats to a point in Ohio, where the coal was reloaded on railroad cars for distribution to market. It appeared that the boats and barges never were located in Cabell County but were at the dump or tipple for only a day or so while being loaded. Held: Under the statute of West Virginia, these vessels were not taxable in Cabell County but were taxable as personal property in Logan County, the local habitat of the corporation, where the company kept its principal office. Island Creek Fuel Co. *v.* Harshbarger, 73 W. Va. 397 (1913).

Hydroelectric Corporations.

Domestic and foreign hydroelectric corporations pay the general property tax locally for state and local purposes.[a] In addition they pay to the State for state purposes the capital-stock or annual license tax,[b] and companies not selling energy pay a license tax of one-twelfth of 1 per cent per month on their authorized capital. The total amount paid per annum, however, can not be less than $500 nor more than $5,000. After such companies have begun to sell energy they no longer pay the tax on authorized capital stock, but instead pay to the State for state purposes 1 per cent on their gross income[c] from the sale of power. The amount of this tax is determined by the state tax commissioner from reports by the corporations.[d]

Toll and Bridge Companies.

Each road, toll bridge, and ferry upon which a toll or fare is charged pays the general property tax assessed locally as realty for state and local purposes, at ten times its annual rental value.[e] In addition companies of these classes pay to the State for state purposes the capital-stock or annual license tax.[b]

Special Land Tax.

Corporations holding more than 10,000 acres of land in West Virginia are required to pay a special tax of 5 cents on each acre in excess of that amount.[f] This tax is paid but once, unless there is a change of ownership.[g]

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[a] Code, secs. 761, 762.

[b] Ibid., secs. 1046; 1048, as amended Laws 1909, chap. 68; 1050; 1052.

[c] "That income which should be derived by such corporation from the sale of its electrical or other energy or power either within or without the State, whether direct or through any distributing or affiliated company or agency." Laws 1913, chap. 11, sec. 16.

[d] Laws 1913, chap. 11, secs. 16, 18.

[e] Code, sec. 760.

The statute directs that these companies shall be assessed "at ten times their annual value," but this phrase is interpreted by tax officials to mean annual rental value, the presumption being that the legislature regarded the franchise of such companies as an asset and prescribed the earnings method for the purpose of ascertaining the value in order that the franchise as well as the tangible property might be assessed. Interview with State tax officials, December, 1914.

[f] Code, sec. 1045.

[g] Report of State Auditor, 1903–4, p. v.

The auditor states that the force of this act has been largely defeated by the construction of the word "land." Bark, oil, and gas "rights" do not come within the purview of the law, although in many cases they represent the only particular in which the land is valuable. In 1910 and again in 1912 the auditor recommended that the tax be made applicable to the holder of any special as well as absolute interest in lands in excess of 5,000 acres. Auditor's Report, 1909–10, p. vi; 1911–12, p. 6.

Stockholders and Bondholders.

When the property or capital of a corporation is assessed in West Virginia, or when the corporation is located in and its property is taxed by another State, the shares of stock are not taxed in the hands of holders. Bonds[a] of domestic and foreign corporations are taxable to the holders thereof.[b]

Foreign Corporations.

The property of foreign corporations of the classes herein treated is assessed and taxed in the same manner and for the same purposes as similar domestic corporations.[c] Several differences, however, between the taxation of domestic and foreign corporations are noted above with respect to the capital-stock and license taxes paid by corporations of these classes.[d]

III. FINANCIAL RESULTS.

Classification of Revenue.

The proportion of total state taxes for state purposes derived from corporations for 1912 was approximately 32 per cent.

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED SEPTEMBER 30, 1912.[e]

Total state receipts, all sources		$2,780,848.05
State taxes from corporations:		
Railroad companies	$44,108.07	
Traction companies (electric)	2,728.82	
Sleeping and freight car companies	216.14	
Express companies,[f] general property	150.86	
Telegraph companies,[f] general property	131.67	
Telephone companies,[f] general property	1,022.83	
Oil and gas companies	21,217.97	
Water and light companies	717.66	
Toll bridge companies	455.48	
Banks[g]	4,638.31	
Bank fees	3,590.00	
Insurance companies (taxes and fees)	145,397.45	
License tax on charters, and statutory attorneys' fees	441,552.53	
Total ascertainable state taxes from corporations		665,928.09

[a] Code, secs. 747, 750, 762.

[b] Ibid., secs. 746, 747.

[c] Ibid., secs. 762, 778.

[d] Ibid., secs. 762; 778; 1048, as amended, Laws of 1909, chap. 68; 1050; 1052; Laws of 1907, chap. 82, secs. 141–146.

[e] Biennial Report of the Auditor of the State of West Virginia, 1911–12, pp. 90–91.

[f] The amount of mileage taxes collected from foreign express, telegraph, and telephone companies was $5,691. It is not separately reported in the auditor's tables.

[g] Estimated by applying the state rate of 0.25 mill to the assessed values of the property as shown in the auditor's report, 1911–12, p. 68.

Other taxes:		
Liquor licenses	$634,322.59	
Business, etc., licenses	166,540.37	
Auto-vehicle licenses	31,366.36	
General property tax [a] (less $4,638.31 above estimated)	210,495.39	
Capitation tax	195,939.18	
Collateral inheritance tax	168,233.37	
Miscellaneous taxes	14,063.45	
Total state taxes not from corporations		$1,420,960.71
Total taxes for state purposes, all sources		2,086,888.80
Receipts from sources other than taxes:		
State institutions	438,797.94	
Fees, fines, etc.	151,162.49	
Sales of lands	9,583.16	
Interest on bonds	45,788.14	
Interest on deposits	44,389.94	
Miscellaneous receipts	4,237.58	
Total receipts from sources other than taxes		693,959.25
Total state receipts, all sources		2,780,848.05

IV. COMMENTS.

Historical.

The first constitution of West Virginia, 1863, established the general property tax with the usual requirements of equality and uniformity, and by the constitution of 1872 the legislature was given additional authority to tax privileges and franchises. With these limitations, and from a thoroughly decentralized method of taxation, there has gradually developed a system centralizing assessment of public-service corporations, providing close supervision of local tax officials, and of officials handling public funds.

The first legislature of West Virginia provided for local assessment of railroads based upon returns submitted by the roads to the local assessors. When the assessors were of the opinion that incorrect valuations had been returned, they were authorized to assess the property according to the best information obtainable. This method proved unsatisfactory, as information which would have enabled assessors to make a proper valuation was withheld. Assessors were obliged to assess as best they could on their own judgment and on such information as they could obtain from

[a] Part of this comes from local taxation of corporations, but it is practically impossible to ascertain the amount thus received, except the amounts above estimated, which are not included in this item.

sources other than the officers and employees of the railroads. The legislature accordingly required railroads to make their returns to the auditor for submission to the board of public works, and when the valuations were not satisfactory to the latter, it was required to appoint a board of commissioners, consisting of one freeholder from each congressional district, to assess the property. One feature of the law which was subjected to severe criticism was that which made a resident of a county through which a railroad ran ineligible for duty on the board of commissioners. This restriction was finally removed in 1881 and shortly afterwards such boards were abolished and their duties transferred to the board of public works. In addition, the returns, which formerly covered only the property of the railroads, were now required to be made in greater detail, showing, among other items, the capital stock, the number, amount, and value of shares, amount paid in, indebtedness, and earnings.

The creation, in 1904, of the office of state tax commissioner, was an important factor in improving the methods of enforcing the tax laws. This official is required to assist the board of public works in matters of assessment, and as a result railroad and other public-service property previously undervalued is now assessed at a high percentage of its true value.[a]

Separation of Sources of State and Local Revenue.

As early as 1902 the special tax commission directed attention to the lack of uniformity and equality in taxation and expressed the opinion that the only way to remedy this injustice was to relieve the general mass of property from taxation for state purposes, and in 1908 the state tax commissioner announced that this was nearly accomplished, but that before there could be complete separation the constitution must first be amended so as to permit the classification of property and give the legislature authority to select separate subjects for state and for local taxation. In 1911 the governor questioned the advisability of abolishing the state general property tax under the present constitution, but was of the opinion that it should be reduced to not more than 1 cent on each $100 of value, and if necessary that the constitution should be amended so as to permit the discontinuance of the state rate.[b]

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[a] Report of State Tax Commissioner, 1907–8, p. 11.

[b] Message of Governor, 1911, p. 15.

Assessment of Coal, Oil, and Gas Property.

It is generally contended that in the application of the general property tax, coal, oil, and gas property should be assessed in proportion to actual values, but there is a very great difference of opinion as to the proper method of arriving at such values.[a] This question presents great difficulty in arriving at valuations under the present law, and as assessors generally know little about the value of coal, oil, and gas property, this makes the duty of assessing such property difficult.

For several years a production tax has been advocated by the state tax commissioner. In his report of 1905–6[b] he treats this matter as follows:

"Considering the interests of the State, its needs and demands, and at the same time complete and absolute justice and equity between the State and the property and business of the owners of this class of property, I am constrained to believe that a specific tax upon the production sufficiently large to cover the value of such properties not otherwise assessed, is the most practical and common sense method of solving the difficulty."

Classification of Property.

The necessity of a constitutional amendment permitting the classification of property for purpose of taxation has been frequently urged. In 1902 the special tax commission reported as follows:[c]

"This constitution was adopted early in the seventies, shortly after the close of the Civil War and before the present development of the State had differentiated and rendered complex the property interests of its citizens; and, while it was drafted and promulgated by a body of men of exceptional ability and unquestioned integrity, yet we should not permit mere sentiment to shackle us with a constitution that is better adapted to the pastoral life of colonial Virginia, whence it was drawn, than to the administration of the mining and manufacturing enterprises of the present, and the coal, gas, and oil developments that are in progress in our midst. * * *

"The very provision, as it now stands, that commends uniformity in taxation, beautiful in theory as it is, and praiseworthy in intent, only breeds difficulties, and in practice defeats the equality and justice at which it aims, causes double taxation in some cases, and no taxation in others. This could be obviated by a constitu-

[a] Report of State Tax Commissioner, 1905–6, p. 23.

[b] Ibid., p. 25.

[c] Preliminary and Final Report of the West Virginia State Tax Commission, 1902, p. 64.

tion that would classify property for taxation according to the experience of governments and the logic of the situation, or at least by a constitution that would not make it impossible for the legislature to make such classification."

In 1908 the state tax commissioner expressed the opinion that the constitution should be amended so as to allow the legislature the widest discretion in the exercise of its power of taxation and that the present limitations and restrictions should be removed.[a]

The adoption of such an amendment was urged by the governor in 1909[b] and again by the tax commissioner in 1910,[c] but up to this time no action has been taken by the legislature.

Appeals.

One feature of the tax statutes which has been criticized by state officials is that providing for appeals from the assessment made by the board of public works. Concerning the statute providing for appeals from assessments of railroad property, the following is taken from the report of the state tax commissioner for 1906:[d]

"Instead of providing that the appeal of the entire road in all counties should be made to some central body or to one court, it requires as many hearings as there are counties in which the railroad is located, which makes it not only expensive for the railroad, but for the State, and is a very impracticable and crude method."

Bibliography.

The following is a list of the more important publications, in addition to the constitution, the statutes, and the court reports, of value in the study of corporate taxation in West Virginia:

Report of West Virginia State Tax Commission, 1902.
Biennial Reports of State Tax Commissioner, 1905–1912.
Biennial Messages of Governors, 1903–1913.
State Supervision of Assessments, T. C. Townsend, State Tax Commissioner, Proceedings of Third Annual Conference of National Tax Association, 1909, p. 345.
Taxation Work in West Virginia, T. C. Townsend, State Tax Commissioner, Proceedings of Fourth Annual Conference of National Tax Association, 1910, p. 185.

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[a] Report of State Tax Commissioner, 1907–8, p. 17.
[b] Message of Governor, 1909, pp. 14, 15.
[c] Report of State Tax Commissioner, 1909–10, pp. 6, 7.
[d] Ibid., 1905–6, p. 32.

NORTH CAROLINA.

I. GENERAL VIEW.

Chief Features.

First. The application of the general property tax to all classes of taxable property.

Second. General or special state privilege taxes applicable to all taxable corporations.

Third. Assessment of public-service corporations and of the "corporate excess" of domestic manufacturing mining, and mercantile corporations by the State Tax Commission.

General Property Tax.

All property of corporations, unless exempt, is subject to the general property tax payable to the State for state purposes and locally for local purposes, except that foreign manufacturing and mercantile companies pay this tax locally for state and local purposes.

Public-service corporations and the "corporate excess" of domestic business corporations (namely, manufacturing, mining. mercantile and miscellaneous corporations) are assessed by the State. Foreign manufacturing and mercantile corporations are assessed locally.

Taxes Supplemental to the General Property Tax.

In addition to the general property tax, domestic and foreign corporations, except railroad, telegraph, telephone, and express companies, pay a capital-stock tax; railroad companies pay a state mileage tax graduated according to gross earnings per mile; telegraph companies, a mileage tax based on pole-line mileage; express companies, a mileage tax based on route mileage, and telephone companies, a gross-receipts tax.

Stockholders and Bondholders.

Shares of stock and bonds of domestic and foreign corporations, except domestic business corporations, are, like bonds of all corporations, taxable to holders.

Foreign Corporations.

The chief distinction between the taxation of domestic and foreign corporations is that domestic business corporations are taxed on "corporate excess," while foreign business corporations are not taxed on such "excess," but, like individuals, they pay the general property tax on property assessed and collected locally for state and local purposes.

Administration.

The State Corporation Commission, composed of three members elected for terms of six years, acts ex officio as a state tax commission. Its powers and duties pertaining to taxation are as follows: To assess the property of public-service corporations; to assess the "corporate excess" of domestic business corporations; to assess the capital stock tax on domestic and foreign corporations; to have general supervision of the administration of the tax laws of the State; to confer with and instruct assessors and boards of equalization; to institute proceedings to enforce penalties; to prefer charges to the governor against tax officials who violate the law or fail to perform their duty; to receive complaints and make corrections as to omitted property or property improperly assessed; to see that each county is visited by at least one member as often as necessary to hear complaints, collect information, and see that all tax officials comply with the law; to require local officials to make annual or other reports which will enable the commission to ascertain the assessed valuations of property, amount of taxes assessed, collected and returned delinquent; to act as a state board of equalization and to order county boards of equalization to raise or lower the valuation of the property, real or personal, in any county, township or city, and to raise or lower the valuation of property of any person, company, or corporation; and to report to each regular session of the legislature, and annually to the governor, its recommendations for the improvement of the revenue laws of the State.[a]

Every four years the board of county commissioners appoints three freeholders in each township as a board of list takers and assessors to assess both real and personal property, and each year other than every fourth year, it appoints one list taker to assess personal property. The board of county commissioners and the

[a] Code, chap. 20; Laws 1913, chaps. 201, 203.

chairmen of the boards of list takers compose the county board of equalization.

The state privilege or license taxes on corporations are paid directly into the state treasury as is also the State's share of the general property tax on all corporations treated herein, except foreign business corporations. State and local general property taxes on foreign business corporations and the local general property tax on all corporations are paid locally to the sheriffs of the counties.[a]

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION.[b]

"Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and, also, all real and personal property, according to its true value in money. The General Assembly may also tax trades, professions, franchises, and incomes, provided that no income shall be taxed when the property from which the income is derived is taxed."[c]

"Property belonging to the State, or to municipal corporations, shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable, or religious purposes; also wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers, libraries, and scientific instruments, or any other personal property, to a value not exceeding three hundred dollars."[d]

"The General Assembly shall levy a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age, which shall be equal on each to the tax on property valued at three hundred dollars in cash.[e] The commissioners of the

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[a] Sources of revenue in North Carolina:

Municipal and local districts.—(*a*) General property tax; (*b*) business taxes and licenses; (*c*) fines, fees, etc.

County.—(*a*) General property tax; (*b*) poll tax; (*c*) business taxes and licenses; (*d*) fines, fees, etc.

State.—(*a*) General property tax; (*b*) corporation taxes; (*c*) inheritance tax; (*d*) income tax; (*e*) poll tax; (*f*) business taxes and licenses; (*g*) fines, fees, etc.

[b] Except as otherwise indicated, references are to the constitution of the State as contained in Code Revisal of 1905 of North Carolina, Vol. II.

[c] Constitution, Art. V, sec. 3.

This section imperatively requires that all real and personal property be taxed by a uniform rule according to its true value in money. A law providing for the levy of an inspection tax will not be so construed as to relieve manufacturers of fertilizers or fertilizing material paying this inspection tax from the payment of property tax required by the constitution. Guano Co. *v.* Biddle, 158 N. C., 212 (1912).

[d] Constitution, Art. V, sec. 5.

[e] Ibid., Art. V, sec. 1.

several counties may exempt from capitation tax in special cases, on account of poverty and infirmity, and the state and county capitation tax combined shall never exceed two dollars on the head."[a]

"The proceeds of the state and county capitation tax shall be applied to the purposes of education and the support of the poor, but in no one year shall more than twenty-five per cent thereof be appropriated to the latter purpose."[b]

"The taxes levied by the commissioners of the several counties for county purposes shall be levied in like manner with the state taxes, and shall never exceed the double of the state tax, except for a special purpose, and with the special approval of the General Assembly."[c]

"All taxes levied by any county, city, town, or township shall be uniform and ad valorem upon all property in the same, except property exempted by this Constitution."[d]

"It shall be the duty of the Legislature to provide for the organization of cities, towns, and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations."[e]

STATUTES.

General Property Tax.

Domestic and foreign corporations pay the general property tax to the State for state purposes and locally for local purposes. Domestic and foreign public-service or public utility companies, and the "corporate excess" of domestic business corporations are assessed by the tax commission. Foreign business corporations like individuals are assessed locally. The statute requires that all property be assessed at its "true value in money." This term is defined by statute as the value in cash for which the property would sell in the usual manner of selling property, but not by

[a] The provision of the constitution that the general assembly shall levy a capitation tax on every male inhabitant of the State, which shall be equal to the tax on property valued at $300 in cash, is self-executing, and when the general assembly fixed the capitation tax at $1.29 and the total property tax at 45 cents ad valorem on every $100 value of real and personal property, the correct capitation tax was $1.35. The general assembly acts in this matter in a purely ministerial capacity. Its function is executive and not legislative. It is made the agent, the accountant, of the constitution, with directions to make a calculation and to record it. Kitchin *v.* Wood, 154 N. C., 565 (1911).

[b] Constitution, Art. V, sec. 2.

[c] Ibid., Art. V, sec. 6.

[d] Ibid., Art. VII, sec. 9.

[e] Ibid., Art. VIII, sec. 4.

forced sale thereof.[a] In practice property usually is assessed at about two-thirds of true value.[b]

Owners are required to list real and personal property, money on hand, money investments, stocks and bonds, and shares of stock in incorporated companies which are not taxed through the corporation itself; also credits, whether secured by mortgage, bond, or note, or due on open account. From the value of credits may be deducted the amount of bona fide collectable debts owing by the taxpayer as principal debtor.[c]

Real property is subject to taxation where situated. Mineral, quarry, and timber rights are assessed to the owner of such rights in separate entries specifying the interest listed. This applies to interests in timber attached to, as well as timber detached from, the soil.[d]

Personal property, with certain exceptions, is taxed where the owner resides. The domicile of a corporation is its principal office in the State.[e]

Personal property is assessed each year. Real property is assessed once in four years, during which time it may be altered by reason of structures improved, erected, or destroyed.[f]

County tax rates are limited so as not to exceed the double of the state tax rate, except for a special purpose, and with the special approval of the general assembly.[g] City or other municipal corporation tax rates are limited to 1 per cent of the value of real and personal property, unless increased by special authority from the general assembly.[h]

Property held for public, religious, charitable, educational, literary, benevolent, and cemetery purposes is exempt from taxation.[i]

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[a] Laws 1913, chap. 203, sec. 28.

[b] Interview with state tax officials, October, 1914.

[c] Laws 1913, chap. 203, secs. 30, 34, 40.

[d] Ibid., chap. 203, sec. 32.

[e] Ibid., chap. 203, sec. 33.

[f] Ibid., chap. 203, sec. 14.

[g] Constitution, Art. V, sec. 6.

There is no constitutional requirement that the rate for county purposes shall be the same everywhere. It varies in the different counties and may vary in different townships, parts of townships, districts, towns, and cities in the same county. Jones *v.* Commissioners, 143 N. C., 59 (1906).

[h] Laws 1913, chap. 201, sec. 3.

Tax on property and tax on privilege are distinct taxes; both may be levied by cities and towns, upon subjects within the corporate limits which are liable to taxation for state and county purposes. Guano Co. *v.* Tarboro, 126 N. C., 68 (1900).

[i] Ibid., chap. 203, sec. 72.

Capital-Stock Tax.

Domestic and foreign corporations, except railroad, telegraph, telephone, and express companies pay to the State for state purposes an annual privilege tax based on capital stock,[a] hereinafter referred to as the capital-stock tax. As applied to domestic corporations, the tax is based on issued and outstanding capital stock, and as applied to foreign corporations it is based on the proportion of capital stock "represented by property owned and used and business transacted" in the State.[b] The rate applicable alike to foreign and domestic corporations is one twenty-fifth of 1 per cent.[c] Assessment by the commission is based on annual reports from the corporations.

Railroad, Steamboat, and Canal Companies.

Domestic and foreign railroad, steamboat, and canal companies pay to the State for state purposes, and locally for local purposes, the general property tax on all property, including intangible or franchise value. In addition railroads pay to the State for state purposes a mileage tax designated by statute a privilege or license tax, and steamboat and canal companies pay the capital-stock tax.

Railroad property may be said to be classified as: (*a*) Property assessable by the commission, namely, the right of way and all property used on or in connection therewith, including rolling stock and franchise value; and (*b*) property assessed locally, such as machine shops, general office buildings, storehouses and their contents located outside of the right of way, and property not used in operation.

For assessment purposes the commission first determines the aggregate value of each company.[d] The net earnings method is used extensively, but not exclusively, for this purpose, and the rate at which the earnings are capitalized varies from 6 to 20 per cent. In addition, the commission considers cost of reproduction, the value of stock and bonds, and all other elements which influence value.[e] The proportion of the aggregate value taxable in North Carolina is then determined according to the ratio which the main track mileage in the State bears to the total main-track mileage.[f] To this proportion, namely, the entire value taxable

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[a] Laws 1913, chap. 201, secs. 76, 82.
[b] The minimum tax is $7.50. Ibid.
[c] Laws 1913 (extra session), chap. 8.
[d] Laws 1913, chap. 203, secs. 62, 64.
[e] Interview with state tax officials, October, 1914.
[f] Laws 1913, chap. 203, sec. 65.

in North Carolina, is applied the state rate for state purposes.[a] For local taxation the value of locally assessed property is first deducted from the entire value taxable in North Carolina, and the remainder is then apportioned to the counties, municipalities, and other taxing districts on the main-track mileage basis. The locally assessed property is not apportioned, but is taxable for county and other local purposes in the taxing districts wherein it is situated.

The property of steamboat and canal companies is required by statute to be assessed for taxation in the same manner as provided for railroads.[b]

The mileage or annual privilege tax, payable by railroad companies, is based on the gross earnings per mile of main track and the rate varies from $2 per mile, when the gross earnings per mile are $1,000 or less, to $10 per mile, when the gross earnings are in excess of $5,000 per mile.[c] This tax is assessed by the state auditor.[d]

Each company of the above-named classes is required to report to the commission for taxation purposes, among other data, information with respect to its capital stock, certificates of indebtedness, bonds, and other securities the value of which is based on the earning capacity of its property, and the value and location of all property necessary for construction and for the company's successful operation.[e]

Railroad companies also report to the state auditor data necessary to determine the amount of the mileage tax.[d]

Telegraph, Telephone, Car, and Express Companies.

Domestic and foreign telegraph, telephone, car, and express companies pay to the State for state purposes, and locally for local purposes, the general property tax on all property, including franchise value. In addition these companies pay to the State for state purposes the following taxes: Telephone companies a gross-receipts tax, telegraph and express companies a mileage tax, and car companies the capital-stock tax.

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[a] Laws 1913, chap. 203, sec. 67(a).

[b] Ibid., chap. 203, sec. 68.

[c] Ibid., chap. 201, sec. 78.

When annual gross earnings per mile of main track are $1,000 or less, the tax is $2 per mile of main track; to and including $2,000, $4; to and including $3,000, $6; to and including $5,000, $8; over $5,000, $10.

[d] Laws 1913, chap. 201, sec. 77.

[e] Ibid., chap. 203, secs. 62, 63, 64.

The commission determines the aggregate value of the operating property of each company of the above-named classes in practically the same manner as described under railroads. The proportion of the aggregate value taxable in North Carolina is determined for telegraph and telephone companies according to the ratio that its wire mileage in North Carolina bears to its total wire mileage, and for car and express companies by the ratio that the route mileage in the State bears to the total route mileage. To the amount thus determined in each case is applied the state rate for state purposes. In the case of telegraph and telephone companies, apportionment for local taxation to the counties, municipalities, and taxing districts is made by the commission on the wire mileage basis. The commission apportions the assessment of car and express companies, for local taxation, to counties on a route mileage basis. Nonoperating property is assessed in the same manner as the general mass of property in the State.[a]

The state mileage tax paid by telegraph companies is $2 per mile of pole line located in the State. Towns may also levy license taxes on telegraph companies in amounts varying, according to population, from $10 to $50 per annum.[b]

The state gross-receipts tax paid by telephone companies equals 2½ per cent of their intrastate gross receipts, including the proportion of interstate gross receipts which is "properly credited to North Carolina." Counties, cities, or towns are prohibited by statute from imposing license taxes on telephone companies.[c]

The mileage tax paid by express companies equals $3 per mile of route in the State. Incorporated municipalities may also levy license taxes on express companies in amounts varying, according to population, from $5 to $75.[d]

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[a] Interview with state tax officials, October, 1914; Laws 1913, chap. 203, sec. 57.

[b] Laws 1913, chap. 201, sec. 80.

Where population is 1,000 to 5,000, license tax may be $10; where population is 5,000 to 10,000, license tax may be $15; where population is 10,000 to 20,000, license tax may be $20; where population is over 20,000, license tax may be $50.

[c] Laws 1913, chap. 201, sec. 81.

The rate of the tax is materially reduced in case the company has invested a certain proportion of its assets in North Carolina State, county, or municipal bonds or in taxable property in the State.

[d] Laws 1913, chap. 201, sec. 79.

Where population is 500 or less, license tax may be $5; where population is 500 to 1,000, license tax may be $10; where population is 1,000 to 5,000, license tax may be $20; where population is 5,000 to 10,000, license tax may be $30; where population is 10,000 to 20,000, license tax may be $50; where population is 20,000 or over, license tax may be $75.

Each telegraph and telephone company is required to report annually to the commission details with respect to its capitalization, financial condition, location, and value of its property, and such other information as the commission may require.[a] Car companies and express companies are required to supply somewhat similar information.[b] Telephone companies also report annually to the state treasurer such data as is necessary to determine the amount of the tax on gross receipts.[c]

Each car company, in addition to other data, is required to report the value of the average number of cars which would be required to operate continuously in the State in order to make an annual mileage equal to the mileage traveled by its cars during the year in North Carolina.[d]

Street Railway, Gas, Water, Electric Light, and Power Companies.

Domestic and foreign street railway, gas, water, electric light, and power companies pay to the State for state purposes, and locally for local purposes, the general property tax on all property including franchise value. In addition they pay to the State for state purposes the capital-stock tax.[e]

The State Tax Commission determines in the same manner as for railroad and other public-service corporations the aggregate value of the property of each company of the above-named classes. To the amount thus ascertained is applied the state rate for state purposes. For local taxation the reported amount of locally assessed property is deducted from the entire value and the remainder, or franchise value, is apportioned to the counties, municipalities, and local taxing districts according to the route or line mileage basis.[f]

Each company of the above-named classes, in addition to other information, is required to report annually to the commission details with respect to its organization, capital stock, value, location of property, and the length of line or route within and without the State.[g]

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[a] Laws 1913, chap. 203, secs. 49, 50, 55.
[b] Ibid., chap. 203, secs. 51–53.
[c] Ibid., chap. 201, sec. 81.
[d] Interview with state tax officials, October, 1914.
[e] Laws 1913, chap. 201, secs. 76, 82.
[f] Ibid., chap. 203, sec. 57; Interview with state tax officials, October, 1914.
[g] Ibid., chap. 203, sec. 54.

Business Corporations.

Domestic business corporations, namely, manufacturing, mercantile, mining, and miscellaneous corporations pay to the State for state purposes, and locally for local purposes, the general property tax on real and personal property, including all elements of intangible value as measured by the market value of capital stock. Foreign business corporations pay locally the general property tax on real and personal property in the same manner as individuals. In addition, both domestic and foreign business corporations pay to the State for state purposes the capital-stock tax.[a]

Domestic corporations of this class are assessed by the commission. No fixed rule is employed, but the market value of the entire capital stock is determined from annual reports furnished by the corporations, or from other available information. The valuation as found, however, embraces all elements of value including surplus and profits, whether earned during the current year or previously accumulated. From the amount thus ascertained is deducted the value of stock in other corporations similarly taxed. To the remainder is applied the state rate. For the purpose of local assessment the commission deducts the value of real and personal property as assessed locally and certifies the remainder or "corporate excess"[b] to the county in which the corporation has its principal office or place of business. Real and personal property assessed locally is taxed where situated.[c] The result of this method

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[a] Laws 1913, chap. 201, secs. 76, 82.

[b] A solvent credit, namely a note, was entered on the tax list by the local assessor in the town where the owner, a domestic industrial corporation, had its principal place of business. Held: That this note was not taxable locally. All the intangible property and assets of these industrial corporations should be included and considered in estimating for taxation the value of their "capital stock." The corporation commission, after giving full and fair consideration to all the evidence contained in the report or otherwise possessed by the commission, and tending to aid the commission to a just conclusion, is required to determine the proper valuation of the corporate property and assets, termed for the purpose of these statutes the "capital stock," and then, as required by law, the commission deducts the value of the tangible real and personal property of the company, which is to be listed in the proper county, and the remainder constitutes the appraisement upon which further taxation is to be assessed, either for state or local purposes. Every asset, solvent credit, investment, etc., is included in the estimate of value placed upon the capital stock. The entire corporate property and assets are included, embracing the surplus, undivided profits, etc. Land Co. *v.* Smith, 151 N. C., 70 (1909).

[c] Laws 1913, chap. 203, secs. 43, 46.

It is the assessed value of real and personal property in the State that must be deducted from the value of capital stock, and not the value of property both within and without the State. Commissioners *v.* Tob. Co., 116 N. C., 441 (1895).

is to tax domestic business corporations on the entire value of their capital stock.

Foreign corporations of the classes above mentioned are not assessed by the commission, but their property, like the general mass of property in the State, is assessed by local officials.[a]

Mineral, quarry, and timber rights are assessed to the owners of such rights in separate entries specifying the interest listed. This applies to interests in timber attached to, as well as timber detached from, the soil.[b]

Stockholders and Bondholders.

Shares of stock and bonds of domestic and foreign [c] corporations of the classes herein treated are taxable to holders, except shares in domestic corporations, which pay taxes on the market value of their entire capital stock as assessed by the State Tax Commission.[d]

Foreign Corporations.

With the exceptions noted under the heading business corporations, foreign and domestic corporations of the classes herein treated are taxed practically in the same manner.

III. FINANCIAL RESULTS.

Classification of Revenue.

The proportion of total state taxes for state purposes derived from corporations for 1912 was approximately 36 per cent.

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED NOVEMBER 30, 1912.[e]

Total state receipts, all sources		$3,333,029.45
State taxes from corporations:		
Steam railroads—		
General property	$284,363.33	
Mileage	17,567.52	
Street railway, light and water, general property	6,417.56	
Car companies, general property	1,117.47	
Express companies—		
General property	1,933.63	
Gross receipts	4,516.19	

[a] Laws 1913, chap. 203, sec. 45.

[b] Ibid., chap. 203, sec. 32.

[c] Shares of stock in a foreign corporation which pays taxes on its property in the State where its property is situated are taxable in North Carolina. Worth *v.* Commissioners, 90 N. C., 409 (1884).

[d] Laws 1913, chap. 203, sec. 40, subdiv. 7.

[e] State Auditor's Report, 1912, pp. 147–148.

State taxes from corporations—Continued.		
Telegraph companies—		
General property	$2,319.41	
Gross earnings	2,495.39	
Telephone companies—		
General property	4,701.79	
Gross receipts	17,354.88	
Steamboat and canal companies, general property	132.61	
Cotton-mill corporations (tangible property) [a]	74,637.51	
Miscellaneous business corporations (tangible property) [a]	84,963.67	
Domestic business corporations (corporate excess)	29,707.51	
Corporation franchise (capital stock)	51,585.00	
Insurance companies, taxes and fees	303,081.24	
Banks, taxes, and fees	45,014.00	
Building and loan, taxes, and fees	4,203.33	
Corporation fees	34,030.26	
Total ascertainable state taxes from corporations		$970,142.30
Other taxes:		
Agricultural department, tonnage tax	216,301.57	
Oil inspection fund	96,234.61	
Poll tax	37,161.62	
Income tax	36,496.91	
Automobile licenses, etc	16,116.00	
Business, etc., licenses	5,808.39	
Inheritance tax	5,264.65	
Oysters and fish, licenses, etc	6,386.30	
Audubon Society fund, hunters' licenses, etc	3,529.00	
Seal tax	1,469.55	
Additional state taxes (miscellaneous)	570.53	
General property tax [b] (less $159,601.18 above estimated)	1,353,304.95	
Total state taxes not from corporations		1,778,644.08
Total taxes for state purposes, all sources		2,748,786.38
Receipts from sources other than taxes:		
Dividends from railroad investments	263,013.00	
State prison earnings	201,932.72	
United States Government aid to colleges	80,000.00	
Sale of vacant and swamp lands	14,988.61	
Indigent pupils expense	11,016.30	
Sale of books, records, etc	9,570.37	
Departmental fees, etc	3,647.87	
Trade-marks	74.20	
Total receipts from sources other than taxes		584,243.07
Total state receipts, all sources		3,333,029.45

[a] Estimated by applying the state rate of 2.5 mills to the assessed values of the property as shown in report of the Corporation Commission, 1911, pp. 154, 232.

[b] Part of this comes from local taxation of corporations, but it is practically impossible to ascertain the amount thus received, except the amounts above estimated, which are not included in this item.

IV. COMMENTS.

Historical.

As early as 1867 special attention was given by the legislature of North Carolina to taxation of corporations, for in that year the law provided that corporations, other than railroad, turnpike, canal, and navigation companies, should be liable to taxation in the same manner as individuals, and that no person should be required to list "as part of his personal property and investments any share or portion of the capital stock or property of any company or corporation" which was required to list its capital and property for taxation in the State. Railroad, turnpike, canal, and navigation companies were not required to list their capital and property, but their stockholders and bondholders were required to list their holdings, which were made taxable at the rate of one-tenth of 1 per cent on their cash value.[a]

Specific taxes were also levied at that time on the gross receipts of gas, express, and telegraph companies,[b] and on "net income and profits"[c] of other companies.

In 1869 a state board, composed of the governor, state treasurer, and state auditor, was required to value the franchise, rolling stock, or boats of every railroad, canal, turnpike, and navigation company, and to certify such valuations to the counties, municipalities, and local taxing districts in that proportion which the length of such road or route in each bore to its total length. Banking companies were also subjected to assessment on franchise value by this board. The tax rate applicable to the franchise value of all of the companies above named was the same as that applied to other property.[d]

In 1877[e] every railroad and canal company incorporated under the laws of the State, and not liable to a tax upon its property or on its shares of stock, was required to pay to the State, "on the corporation," a tax of 1 per cent on gross receipts. If the company operated partly outside the State the tax was based on that proportion of the gross receipts which the length of the line within the State bore to the whole length of line. If the company were liable to a tax upon its franchise and personal property, but exempt from tax upon its real estate, the gross-receipts tax was one-half of 1 per cent. If not liable to a tax on property or franchise,

[a] Laws 1866–67, pp. 96, 99.
[b] Ibid., pp. 102, 111, 112.
[c] Ibid., p. 100.
[d] Laws 1868–69, p. 165.
[e] Laws 1876–77, p. 297.

the corporation was required to pay 1 per cent upon the actual cash value of every share of its capital stock.

In 1879 a tax of $50 per car per annum[a] was imposed on sleeping-car companies.

In 1881[b] railroad and canal companies not liable to a tax on property or franchise were required to pay a "privilege tax of $25 per mile per annum," instead of the tax on shares. Telegraph companies were added to the list of companies whose franchises were required to be assessed by the State.[c]

In 1883 telephone companies were made subject to the gross receipts tax paid since 1867 by express and telegraph companies, and the tax of $50 per car on sleeping car companies was replaced by a tax of fixed amount, namely, $500 per annum.[d]

In 1887 all companies and associations incorporated under the laws of the State, except insurance companies, were taxed upon the aggregate value[e] of the shares of stock, less assessed valuation of all the real and personal property.

As to railroads, the provision for valuing the franchise continued in effect. A new provision required a board of appraisers[f] to deduct from the aggregate value of the capital stock (changed in 1889 to read "capital stock and value of the franchise")[g] "the total assessed value of all real and personal property, 'railroad track' and 'rolling stock,' and the proportion of such stock after such deductions held by nonresidents or by said company as a sinking fund to meet its indebtedness." The values of the "shares of capital stock" as thus determined, of the "railroad track," and of the "rolling stock," were apportioned on a mileage basis among the counties through which the road ran. When part of the road was outside the State the value within the State was obtained on the mileage basis.

Machine and repair shops, general office buildings, storehouses, and all real and personal property outside of the right of way and depot grounds were listed for taxation in the county where located.

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[a] Laws 1879, p. 89.

[b] Laws 1881, p. 195.

[c] Ibid., p. 203.

[d] Laws 1883, p. 211.

[e] Laws 1887, p. 283, et seq. The market value, or if no market value, then the actual value.

[f] The board of appraisers was composed of the chairmen of the boards of county commissioners of the counties through which the road passed.

[g] Laws 1889, p. 209. Value of the capital stock and franchise was to be as ascertained by the governor, auditor, and treasurer of State.

In 1891 the board of railroad commissioners was made the assessing board of railroad property. It was required to value and apportion to the counties railroad track and rolling stock of railroads;[a] also the excess of the value of capital stock and franchises over the assessed value of real and personal property, railroad track, rolling stock, and the proportion of stock held by nonresidents. If the railroad was exempt from taxation on its real estate but liable to a tax upon the value of its shares and of personal property, it was subject to an additional tax of one-half of 1 per cent on its gross receipts; if all its property was exempt, it was subject to a tax of 1 per cent on gross receipts.[b] The rate on sleeping and parlor cars was in 1891 again changed to $50 per car instead of $500 per annum for each company.[c]

In 1895 a general privilege tax, with rates graduated according to the amount of authorized capital stock, was enacted. It applied to every private business corporation except railroad, bank, and insurance.[d]

In 1897 the method of taxing express companies was changed to an annual tax of $3,000 for every express company whose gross receipts on business done in the State exceeded $10,000 per year. Otherwise express companies, like telegraph and telephone companies, were made taxable at 2 per cent on gross receipts from business within the State.[e]

In 1899 the base of the general franchise tax was changed from authorized to subscribed capital stock.[f] Land companies whose capital stock did not exceed $10,000 actual value, however, were subjected to a maximum privilege tax of $25.

In 1899 the tax on gross receipts of certain railroad companies was omitted from a reenactment of the statute, and the board of railroad commissioners was required to assess the property and rolling stock of all railroad companies, taking into consideration the market value of stock, earnings, etc.[g] Telegraph, telephone, and express companies were required to report to the board of railroad commissioners, who valued property of these companies and certified such valuations to the counties wherein they operated.

The graduated gross-earnings tax on steam railroad companies dates from 1901.[h]

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[a] Laws 1891, p. 321.
[b] Ibid., p. 300.
[c] Ibid., p. 302.
[d] Laws 1895, p. 125.
[e] Laws, 1897, p. 242.
[f] Laws 1899, p. 48 et seq.
[g] Ibid., p. 81.
[h] Laws 1901, p. 147.

Separation of Sources Recommended—Constitutional Amendment.

The state treasurer, in his report for 1911–12, recommended that the sources of state revenue be separated from the sources of county revenue, that the State should levy the constitutional limit upon its public-service corporations, and that the localities be permitted to raise their revenue from personal property and real estate, which should not be taxed for state purposes.[a]

A proposed constitutional amendment submitted to the voters by the legislature in extra session during 1913 [b] and rejected by the people in 1914 was intended to authorize the legislature to classify subjects of taxation and to separate the subjects of taxation for state and local purposes.[b] The language intended to replace the wording of section 3, Article V, of the state constitution was as follows:

"The General Assembly may, consistent with natural justice and equity, classify subjects of taxation; and all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax: *Provided*, that no income shall be taxed when the property from which the income is derived is taxed; and, consistent with natural justice and equity, the General Assembly may separate subjects of taxation for state and local purposes."

Mortgage-Recording Taxes.

In view of the futility of attempted taxation of mortgages under the general property tax, the Tax Commission in 1912 expressed the opinion that the mortgage-recording tax systems of New York and Massachusetts, whereby mortgages are taxed at a low rate at the time of recording, were worthy of careful study, but the adoption of a similar method by North Carolina would necessitate a change in the state constitution.[c]

Corporate Excess.

The assessment of domestic business corporations on "corporate excess," namely, on that element of value represented by the difference between the market value of the total capital stock and the assessed value of real and personal property as found by local officials, seems to have met with success in North Carolina from the viewpoint of revenue. The effect of the statute is to tax for both state and local purposes the entire value of domestic busi-

[a] Report of State Treasurer, 1911–12, p. 10.
[b] Laws 1913, Extra Session, pp. 97, 98.
[c] Report of Tax Commission, 1912, p. v.

ness corporations as indicated by the market or actual value of their capital stock, while foreign business corporations are not taxable on "corporate excess," but they are taxable similarly to individuals.

While the amount of revenue derived from the taxation of "corporate excess" is not readily ascertainable, the assessed valuation as found by the State Tax Commission for the years 1901 to 1913, inclusive, are shown in the following tabulation:[a]

Year.	Corporate excess, assessed value.	Year.	Corporate excess, assessed value.
1901	$5,837,442.00	1908	$10,254,874.00
1902	6,059,166.00	1909	15,436,380.00
1903	5,803,025.40	1910	12,464,205.00
1904	6,924,195.15	1911	9,136,694.00
1905	8,275,697.00	1912	8,375,121.00
1906	9,674,654.00	1913	10,444,157.00
1907	10,365,090.00		

As shown by the above tabulation, the assessments of "corporate excess" increased gradually from a little less than $6,000,000 in 1901, to more than $15,000,000 in 1909, and then decreased to approximately $8,000,000 in 1912. This somewhat abrupt decrease, according to state officials, does not indicate a decrease in the taxable value of corporations, but represents a tendency on the part of local assessors to raise the assessments of real and personal property belonging to corporations taxable on corporate excess.[b]

Bibliography.

The following is a list of the more important publications, in addition to the constitution, the statutes, and the court reports, of value in the study of corporate taxation in North Carolina:

Reports of State Treasurer.
Reports of State Auditor.
Reports of State Tax Commission.
Reports of State Corporation Commission.
Our Taxation Problem, by Charles Lee Raper, published in the South Atlantic Quarterly, October, 1913.
Studies in State Taxation, Taxation in North Carolina, by George Ernest Barrett, Johns Hopkins University Studies in Historical and Political Science, Vol. XVIII, 1900.

[a] Report of the State Tax Commission, 1914, p. 384.
[b] Interview with state tax officials, October, 1914.

SOUTH CAROLINA.

I. GENERAL VIEW.

Chief Features.

First. The taxation of all property under the general property tax for state and local purposes.

Second. The additional taxation of corporations for state purposes.

General Property Tax.

All property of domestic and foreign corporations of the classes herein treated is taxed under the general property tax, paid locally for state and local purposes. Certain property of corporations is assessed by the state board of assessors; all other property is assessed locally.

Taxes Supplemental to the General Property Tax.

In addition to the general property tax, all public-service corporations pay to the State for state purposes a gross-receipts tax, and other corporations pay a tax to the State for state purposes, which, with respect to domestic corporations, is based on paid-up capital stock, and with respect to foreign corporations is based on the value of corporate property used in business in the State.

Stockholders and Bondholders.

When the corporate property is taxed in the State, shareholders and bondholders are not taxed; otherwise shares of stock and bonds are taxable in the hands of the holders.

Foreign Corporations.

Foreign corporations of the classes herein treated are taxed in practically the same manner as similar domestic corporations, except that the annual corporation license tax on domestic corporations is based on paid-up capital stock, whereas in the case of foreign corporations it is based on value of corporate property used in business in the State.

Administration.

The State Board of Assessors, an ex officio board composed of the treasurer of state, secretary of state, comptroller general, attorney general, and chairman of the board of railroad commissioners, annually assesses the operating property of railroad, telegraph, telephone, express, and sleeping-car companies and apportions such assessed valuations to the counties and townships through which such companies operate.[a] This board also assesses the state gross-receipts tax upon public-service corporations.[b]

The state board of equalization, an ex officio board composed of the chairmen of the respective county boards of equalization, equalizes as between the counties and cities, towns, and villages therein, the assessments of realty which is made every fourth year.[c] It also equalizes annually the assessments against manufacturers of textile fabrics, cottonseed oil and fertilizer companies, and canal companies providing power.[d]

The comptroller general determines the sufficiency of all property returns made by corporations assessed by the state board of assessors, and certifies such assessments to the proper localities;[e] he also determines and collects the amount of the supplemental taxes on corporations other than public-service corporations;[f] he prescribes the form of all tax returns,[g] instructs officials as to their duties under the tax laws,[h] and hears appeals from the county boards of equalization.[i]

County boards of equalization hear complaints and equalize assessments of real and personal property within their respective counties, and hear appeals from the local boards of equalization.[i]

Township, city, or town boards of equalization examine and equalize all local assessments and direct the assessment of omitted property,[j] and the county auditor receives the returns of all such property as listed and valued by the owner.[k]

The state treasurer collects the state gross-receipts tax imposed on public-service or public-utility corporations,[l] the comptroller general collects supplemental taxes on other corporations, and

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[a] Civil Code, secs. 312, 320–322.
[b] Ibid., sec. 367.
[c] Ibid., secs. 436, 437.
[d] Ibid., secs. 337–339.
[e] Ibid., secs. 321, 325.
[f] Ibid., secs. 364, 365.
[g] Ibid., sec. 295.
[h] Ibid., sec. 411.
[i] Ibid., sec. 427.
[j] Ibid., sec. 423.
[k] Ibid., sec. 383.
[l] Ibid., sec. 369.

county treasurers collect all general property taxes for state and local purposes.[a]

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION.[b]

All property taxes shall be laid upon actual value, as ascertained by an assessment therefor.[c] The general assembly shall provide for a uniform and equal rate and shall prescribe regulations for a just valuation of all property except mines and mining claims, the products of which alone shall be taxed.[d] A graduated tax on incomes and a graduated license on occupations and business may be imposed.[e] All property taxes, state and local, shall be levied on the assessment made for state taxes.[f]

Certain property used for public, educational, charitable, and religious purposes is exempt from taxation.[g]

Counties and local districts may be vested with power to levy and collect taxes uniform as to persons and property.[h] All shares of stockholders in any bank located in the State shall be listed at true value in money and taxed for municipal purposes where the bank is located; "true value in money" shall mean and include all surplus or extra moneys, capital, and other personal property owned or in possession of the bank. A like rule of taxation shall apply to the stockholders of all other corporations.[i]

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[a] Civil Code, secs. 444, 445.

Sources of revenue in South Carolina:

Municipal and local districts.—(*a*) General property tax; (*b*) poll tax; (*c*) business taxes and licenses; (*d*) fees, fines, and forfeitures.

County.—(*a*) General property tax; (*b*) poll tax; (*c*) business taxes and licenses; (*d*) fees, fines, and forfeitures.

State.—(*a*) General property tax; (*b*) business taxes and licenses; (*c*) income tax; (*d*) fees, fines, and forfeitures.

[b] Except as otherwise indicated, references are to the constitution of the State, as contained in the Civil Code of South Carolina, 1912.

[c] Constitution of 1895, Art. III, sec. 29; Art. I, sec. 6.

[d] Constitution, Art. X, sec. 1.

[e] Ibid.

The general assembly may provide a graduated tax on incomes, and is empowered to adopt its own methods and ratio of graduation with which courts have nothing to do. The exercise of such graduation is necessarily arbitrary. Alderman *v.* Wells, 85 S. C., 507 (1910).

[f] Constitution, Art. X, sec. 13.

"Assessment" means valuation. Southern Ry. Co. *v.* Kay, 62 S. C., 28, 34 (1901).

[g] Constitution, Art. X, sec. 4.

[h] Ibid., Art. X, sec. 5. Interview with state tax officials, October, 1914.

[i] Ibid., Art. X, sec. 5.

Cities and towns may exempt from taxation, except for school purposes, manufactories established within their limits for five successive years from the time of the establishment of such manufactories.[a]

License or privilege taxes imposed by cities and towns shall be graduated so as to secure a just imposition of such tax upon the classes subject thereto.[b]

The counties shall levy an annual school tax of 3 mills on the dollar upon all taxable property, for use therein. The legislature shall levy such annual school tax as may be necessary, to be apportioned among the counties having deficiencies in school funds.[c]

STATUTES.[d]

General Property Tax.

All corporations, domestic and foreign, pay the general property tax locally for state and local purposes. Property is required by statute to be assessed at true value in money, or the price usually obtainable at sale under order or direction of the court.[e] In practice, however, property is assessed locally at from 10 to 60 per cent, and corporation property is assessed by the State Board of Assessors at from 40 to 50 per cent of full cash value.[f]

The assessed valuation of certain property of public-service corporations is apportioned for taxation on the mileage basis to the localities through which the lines or routes extend. Other property of these companies and all real estate of other corporations is taxed where located. Merchants' and manufacturers' stock and capital are taxable where located. Domestic corporations owning no property in the State are not taxed on their capital.[g] All property of corporations, except that of certain manufacturing and

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[a] Constitution, Art. VIII, sec. 8.

[b] Ibid., Art. VIII, sec. 6.

The constitution authorizes the general assembly to provide for license or privilege taxes, and municipalities are allowed to graduate the same, and the city of Abbeville can levy such taxes on businesses and occupations carried on in the city. The above section provides that such taxes shall be just, not uniform, but the city must tax without discrimination all businesses or vocations of the same class. Hill *v.* City Council of Abbeville, 59 S. C., 396 (1901).

A municipal ordinance imposing a license tax on steam railroads for business done exclusively within a city was sustained. Florida Cen. and Pen. R. R. *v.* City of Columbia, 54 S. C., 266 (1899).

[c] Constitution, Art. XI, sec. 6.

[d] The references herein given are to the Civil Code of South Carolina, 1912.

[e] Civil Code, sec. 379.

[f] Interview with state tax officials, October, 1914.

[g] Civil Code, sec. 333.

public-service corporations, is assessed locally. Real estate is assessed every fourth year[a] and personalty is assessed annually.

Moneys and credits are taxable as general property, but each person assessed is entitled to deduct from his credits all legal debts owing by him, other than taxes or subscriptions to the capital stock of a corporation, or to charity.[b]

Besides the usual exemptions of property used for public, educational, charitable, and religious purposes, wearing apparel in use, and subsistence on hand to the value of $100, are exempt. Cities and towns are authorized to exempt from taxation, except for school purposes, local manufacturing industries, for five successive years from establishment therein.[c]

Special Taxes.

Gross-receipts tax.—Domestic and foreign railroad, street railway, telegraph, telephone, express, passenger car, navigation, waterworks, power, and light companies pay to the State for state purposes a gross-receipts tax of three-tenths of 1 per cent on their gross income from intrastate business.[d] This tax is assessed by the State Board of Assessors, based on reports required to be made by these companies to the state board for this purpose, and on reports made to the state officials for other purposes.[e]

Capital stock tax.—Domestic corporations of all classes other than the classes named in the preceding paragraph, pay to the State for state purposes a tax of one-half of 1 mill upon each dollar of paid-up capital stock, but the minimum fee is $5. This tax is denominated by statute an annual license fee.[f] Similar foreign corporations pay a tax based upon the value of corporate property used in the conduct of their business within the State. The rate of this tax is one-half of 1 mill upon each dollar of value of such

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[a] Civil Code, sec. 300.

[b] Ibid., sec. 293.

[c] Constitution, Art. VIII, sec. 8.

[d] Civil Code, sec. 369. Interview with state tax officials, October, 1914.

[e] Ibid., secs. 361, 362, 366, 367.

[f] Ibid., sec. 364.

"The amount so directed to be paid is for the privilege of carrying on business in the State. Apart from this privilege tax, of course, property in the State is subject to the regular levies for county and state purposes. It seems so evident that a State has a right to make such exactions from its domestic corporations, its own creatures, that no one would question its exercise. Certainly, such an exercise involves no double taxation, for the privilege is clearly one thing and the property is another. That the State has a right to tax such privileges has been held in a line of cases beginning, almost, with the foundation of our republic." Ware Shoals Manufacturing Co. *v.* Jones, Comptroller, 78 S. C., 211 (1907).

property, with a minimum fee of $5.[a] Domestic corporations, taxed on the basis of paid-up capital stock, pay to the comptroller general the amount due upon filing their report with said officer, and the amount due from foreign corporations is determined by the comptroller general from reports made to him by these companies.

Tax for support of railroad commission.—Railroad, telegraph, telephone, and express companies are taxed locally for the maintenance of the board of railroad commissioners according to their gross income and in proportion to the track route or line mileage in the State.[b]

Railroad Companies.

Domestic and foreign railroad companies pay locally the general property tax for state and local purposes. In addition, they pay to the State for state purposes the gross-receipts tax, and locally the tax for the support of the railroad commission.

Railroad property may be described as classified for assessment purposes thus: (*a*) Operating property, which is assessed by the State Board of Assessors,[c] and (*b*) nonoperating property which is assessed locally. Operating property is subdivided as right of way, rails, all right-of-way-superstructure and rolling stock; and nondistributive property, which includes all other property, such as depots, terminals, fixtures, tools, implements, machinery, and other stationary property used in daily operation.

The method used by the State Board of Assessors in assessing operating property consists of a readjustment from year to year of the valuation found in 1907. In that year several methods, such as the capitalization of earnings, etc., were used to determine the valuation of the roads operating in the State. These valuations were then adjusted so that the aggregate would not exceed the value of railroad property in South Carolina as given by the

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[a] Civil Code, sec. 365.

A foreign corporation loaning money from its New York office on the security of South Carolina real estate is doing business in the State, and therefore subject to this fee. British-American Mortgage Co. *v.* Jones, 77 S. C., 443 (1907).

[b] Civil Code, secs. 3141, 3328.

"The legislative and constitutional provisions of the State that taxation of property shall be equal and uniform and in proportion to its value is not violated by exacting a contribution according to their gross income in proportion to the number of miles of railroad operated in the State to meet the special service required." (Referring to the expenses and salaries of the railroad commissioners.) Charlotte C. & A. R. R. Co. *v.* Gibbes, 142 U. S., 386 (1892).

[c] Civil Code, secs. 305, 312.

United States Bureau of the Census for 1904. These figures were reduced about 40 per cent for the purpose of bringing the assessment of railroad property to approximately the same percentage of true value as applied to the assessment of the general mass of property in the State.[a]

After determining the assessment annually, the value of distributive property is apportioned by the state board on the main-track mileage basis to the several counties and townships into which the road extends.[b] County auditors make a similar apportionment to school or taxing districts.[c]

The valuation of nondistributive property is assigned directly to the localities where situated.[b] Nonoperating property is assessed where located by local officials.

Each railroad company is required to report to the comptroller general details, with respect to its capital stock, earnings, and other financial data, the length of track, valuation and location of property, and such other information as will enable the state board to arrive at a proper valuation of the company's property.[d]

Telegraph, Telephone, Express, and Passenger-Car Companies.

Domestic and foreign telegraph, telephone, express, and passenger-car companies pay locally the general property tax for state and local purposes.[e] In addition, they pay to the State for state purposes the gross-receipts tax, and locally, except car companies, the tax for the support of the state board of railroad commissioners.

The statute[f] directs the State Board of Assessors to ascertain the true cash value of the entire property of each company of the above-named classes in the following manner:

(*a*) The aggregate value of the capital stock is determined by the sum of the market value or actual value of all the shares. To this is added any mortgage indebtedness which may be incurred. The total of these two items represents the entire value of the company's property.

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[a] Interview with state tax officials, October, 1914.

[b] Civil Code, sec. 308.

[c] Ibid., sec. 313. Interview with state tax officials, October, 1914.

The law requires the State Board of Assessors to apportion the value of railroad property to school or taxing districts, but this plan is said to be impracticable

[d] Ibid., secs. 306 and 311.

[e] Ibid., sec. 325.

[f] Ibid., sec. 323.

(*b*) The statute further directs that for the purpose of ascertaining the true cash value of the property within the State of South Carolina the board shall deduct the assessed value for taxation purposes of all real estate not used specifically in the business of said companies situated within the State.

(*c*) The board shall next ascertain the true cash value of all property of such companies within the State of South Carolina, by taking the proportion of the remainder as above determined: Of telegraph and telephone companies which the length of the line within the State bears to the total length of line; or of car companies by taking a like proportion of the whole length of the line over which the cars run; or of express companies by taking a like proportion of the whole length of the line or route of such company.

(*d*) From the true cash value of the property within South Carolina of each company of the above-named classes, the board is directed to deduct the assessed value for taxation of all real estate, structure, machinery, and appliances within the State and subject to local taxation in the counties and townships, and the residue shall be assessed by the board to the corporation.

In practice, however, the statute is not followed and the state board, by a method which it does not reveal, assesses all property used in the business of each such company.[a]

Apportionment to the counties and townships by the state board is based on that proportion of the valuations of poles, iron wire, and copper wire which the number of miles of wire of telegraph and telephone companies and of route of express and passenger companies in any county or township bears to the entire number of miles of wire or route within the State.[b]

Public Utility Corporations.

Domestic and foreign street railway, gas, water, electric light, power, and navigation companies pay the general property tax locally for state and local purposes. In addition, they pay to the State for state purposes the gross-receipts tax.[c] All interests or shares in vessels navigating the waters within or bordering on the State, whether such vessels are within the jurisdiction of the State or not, and whether registered or licensed within the State or not, are taxable.[d]

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[a] Civil Code, sec. 323. Interview with state tax officials, October, 1914.
[b] Ibid., sec. 325.
[c] Ibid., sec. 369.
[d] Ibid., sec. 293.

Real and personal property of these companies is assessed locally in the same manner as property of individuals.[a]

Manufacturing, Mercantile, and Mining Corporations.

Domestic and foreign manufacturing, mercantile, and mining corporations pay locally the general property tax for state and local purposes. In addition, domestic corporations pay to the State for state purposes the capital-stock or corporation license tax based on paid-up capital stock, and foreign corporations pay a similar tax based on the value of corporate property used in business in the State.[b]

Real property, except lands actually mined, and personal property belonging to companies of the above-named classes, is assessed locally.[c] Land actually mined is not taxed, but in lieu thereof the proceeds from mines are taxed locally.[d] Materials used in manufacture are assessed at the monthly average cost value of such materials on hand during the year.[e]

A statement of assessments on property of manufacturers of textile fabrics, cottonseed oil, and fertilizer companies, and canal companies providing power, is forwarded to the comptroller general for the action of the state board of equalization, for the purpose of obtaining uniformity in the taxation of the property of such industries.[f] The state board fixes its own value upon the property of these companies practically independently of the assessments made locally.[g]

Mercantile corporations are assessed on the value of goods, merchandise, moneys, and credits pertaining to their business on hand January first.[h]

The cash market value of the gross proceeds of active mines is assessed and taxed locally under the general property tax for state and local purposes in lieu of the tax on actively mined lands.[i]

Personal property used in connection with mines and land not actively mined is assessed and taxed as similar property of indi-

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[a] Civil Code, secs. 293, 296–300.
[b] Ibid., secs. 364, 365.
[c] Constitution, Art. X, sec. 1; Civil Code, secs. 293, 296–300.
[d] Civil Code, sec. 304.
[e] Ibid., sec. 302.
[f] Ibid., secs. 337, 340.
[g] Interview with state tax officials, October, 1914. See Comments, p. 114.
[h] Civil Code, sec. 299.
[i] Ibid., sec. 304.

viduals. Mining rights and mining improvements owned separately from the fee are assessed to the owner of the rights as personal property.[a]

Stockholders and Bondholders.

Shares of stock in and bonds of domestic and foreign corporations whose property is taxed in the State are not taxed in the hands of holders.[b] Shares of stock in and bonds of other corporations are taxable to holders under the general property tax.[c]

Foreign Corporations.

The general property taxes are imposed on foreign corporations in the same manner and to the same extent as against similar domestic corporations. This applies also with respect to the gross-receipts tax on public-service and public-utility companies. Other classes of foreign corporations pay the State a tax based on the amount of corporate property used in business in the State, while similar domestic corporations pay on the basis of paid-up capital stock.

III. FINANCIAL RESULTS.

Classification of Revenue.

The proportion of total state taxes for state purposes derived from corporations for 1912 was approximately 51 per cent.

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED DECEMBER 31, 1912.[d]

Total State receipts, all sources		$2,437,997.62
State taxes from corporations:		
Railroads, steam, and street—		
General property [e]	$251,659.83	
Gross receipts	29,097.64	
Sleeping car—		
General property [e]	948.75	
Gross receipts	117.55	
Express companies—		
General property [e]	1,727.28	
Gross receipts	435.99	
Telegraph companies—		
General property [e]	3,291.45	
Gross receipts	233.68	

[a] Civil Code, sec. 380.

[b] Ibid., secs. 294, 2805. Interview with state tax officials, October, 1914.

[c] Ibid., secs. 287, 293.

[d] Report of Comptroller General, Pt. II, 1912.

[e] Estimated by applying the state rate of 5.75 mills to property values found in the Report of Comptroller General, Pt. II, 1912.

State taxes from corporations—Continued.		
Telephone companies—		
General property [a]	$7,099.93	
Gross receipts	2,468.70	
Navigation companies, general property,[a] and gross receipts	405.01	
Water, light, and power companies, general property [a] and gross receipts	28,703.67	
Fertilizer companies, general property [a] and fees	236,929.69	
Cotton mill and textile companies—		
General property [a]	160,598.26	
Capital stock	35,884.87	
Cottonseed-oil mills, general property [a] and capital stock	11,017.39	
Banking companies, general property [a] and capital stock	142,696.50	
Building and loan companies, general property [a] and capital stock	5,512.86	
Insurance companies, taxes and fees	176,835.09	
Miscellaneous domestic and foreign corporations, capital-stock tax	33,935.17	
Railroad-commission tax	6,652.10	
Incorporation fees, etc	390.00	
Total ascertainable state taxes from corporations		$1,136,641.41
Other taxes:		
Tax on feed stuffs	22,145.15	
Income tax	14,097.69	
Board of fisheries	8,563.78	
Game protection fund	1,943.50	
Back taxes	537.49	
General property tax (less $599,400.44 above estimated) [b]	1,055,802.66	
Total state taxes not from corporations		1,103,090.27
Total taxes for state purposes, all sources		2,239,731.68
Receipts from sources other than taxes:		
Dispensary	48,567.98	
Fees, office secretary of state	27,081.85	
Miscellaneous fees	1,473.41	
Interest	42,320.58	
United States aid to colleges	50,000.00	
Judgment recovered	11,413.92	
Sinking fund commission	8,660.94	
School fund	7,247.26	
Phosphate royalty	1,500.00	
Total receipts from sources other than taxes		198,265.94
Total state receipts, all sources		2,437,997.62

[a] Estimated by applying the state rate of 5.75 mills to property values found in the Comptroller's report.

[b] Part of this comes from local taxation of corporations, but it is practically impossible to ascertain the amount thus received, except the amounts above estimated, which are not included in this item.

IV. COMMENTS.

Historical.

Previous to 1861 the greater part of state revenue was derived from a per capita tax on slaves, while the revenue realized from land taxation was less than one-fourth of the revenue from this head tax. At the close of the Civil War the revenue derived from land taxation had increased both in amount and in proportion to other sources, but more than one-half of the total revenue was raised from income, license, and capitation taxes. The present system of raising state revenue by an ad valorem tax upon the value of all property in the State was adopted in 1868.

Tax Reforms.

The present system of taxation, in the opinion of the comptroller general, now needs revision so that the necessary revenue of the State can be raised in such a manner that each taxpayer and each dollar of property shall bear a just share of the burden. To accomplish this all property must be assessed at true value. According to the same authority a popular objection to assessment at true value is based on the fear that the tax rate would not be reduced, but that the legislative appropriations would increase and the people be taxed to the limit of their capacity. The present rate of three mills for school purposes is fixed by constitutional provision, and it would be necessary to repeal this section if a lower rate were imposed. The comptroller general also urges the submission of a constitutional amendment which would remove the present restrictions on the exercise of the taxing powers of the legislature, so that it will be free to adopt, from time to time, such tax laws as may seem best.[a]

For several years past this official has urged the creation of a permanent tax commission, with power to assess the property of railroad, telegraph, telephone, express and car companies, now assessed by a number of state officials acting ex officio, and to do the work now performed by the state board of equalization. Attention is called to the fact that the present assessing board and the equalizing board fix different standards of valuation, hence a common standard necessary for equality of taxation is lacking. In the opinion of the comptroller general the tax commission proposed should consist of five members, two of whom should give their entire time to its work; they should

[a] Report of Comptroller General, Pt. II, 1913, p. 11.

examine property values in the different counties and tax districts for the purpose of properly equalizing value between counties, leaving to the local officers, however, the power of equalizing assessments between individuals.

The composition of the present state board of equalization with representation from each county renders it impossible to secure anything like a fair and uniform assessment of property because of the temptation of each member to secure the lowest possible assessment of property in his county.[a]

The comptroller general also urges legislation for the purpose of securing the taxation of cars of freight-line companies operating in the State.

Assessment of Textile Industries.

Between the years 1902 and 1912 textile mill (or manufacturing) companies, according to the comptroller general, were assessed on the total value of their plant as indicated by the market or actual value of their capital stock. In 1912 the State Board of Equalization adopted, without examination as to methods of valuation used, the reported assessments of a committee selected by the said board to value this class of property. This valuation also formed the basis of assessment for 1913, but instead of assessing each company according to property returned by it, the board, following a suggestion from the Cotton Mill Association, reduced the aggregate of all textile mill assessments to a valuation per spindle, which, multiplied by the number of spindles in any mill, equaled the total assessment thereof.

The comptroller general protested that this method was faulty, and said in effect: That the value per spindle based on the aggregate value of all mills in the State bore no relation to the total value of the property of any particular mill; that improved looms required less spindles than others; that the value of the mill varied with the value and amount of land owned; that such land ownership varied from the minimum necessary for mill (or manufacturing) purposes to an amount used for a mill (or manufacturing) village; and that relative debits and credits are important factors affecting the whole property of a mill (or manufacturing) company.[b]

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[a] Report of Comptroller General, Pt. II, 1913, pp. 9–16.

[b] Printed letter of comptroller general to the state board of equalization, May 21, 1913.

Bibliography.

The following is a list of the more important publications, in addition to the constitution, the statutes, and court reports, of value in the study of corporate taxation in South Carolina:

Reports of Comptroller General.
Reports of State Treasurer.

GEORGIA.

I. GENERAL VIEW.

Chief Features.

First. The broad application of the general property tax supplemented by a capital-stock or annual-occupation tax of small amount.

Second. The assessment of all public-service or public-utility property by a state official.

General Property Tax.

Domestic and foreign transportation and transmission companies pay to the State for state purposes and locally for local purposes, and mercantile and manufacturing companies pay locally for both state and local purposes, the general property tax. Public-service and public-utility corporations are assessed by a state official on all property, including franchise. All other property is assessed by county officials.

Taxes Supplemental to the General Property Tax.

In addition to the general property tax, domestic corporations pay locally for state purposes, and foreign corporations pay to the State for state purposes, the capital-stock or annual-occupation tax based on authorized capital stock. Mercantile, manufacturing, and miscellaneous corporations conducting certain lines of business, pay locally for state purposes annual license taxes, based either on the specific kind of business transacted or according to the population of the county, city, or town wherein such companies operate.

Stockholders and Bondholders.

Shares of stock in corporations of the classes herein treated are not taxed to the individual holders, if the corporate property is taxed in the State. Bonds are taxable to holders.

Foreign Corporations.

Foreign corporations of the classes herein treated are taxed in practically the same manner as similar domestic corporations.

Administration.

The comptroller general, elected every two years, is required to perform, among other duties, the following: To assess the property, including franchise value, of transportation and transmission companies; to make such regulations as will insure prompt and faith-

ful execution of the tax laws; and to recommend improvements in the revenue system.[a]

The tax commissioner is appointed by the governor and confirmed by the senate for a term of six years. No original assessing power is granted the commissioner, but his duties are: To equalize assessments between counties by adding or deducting fixed percentages to or from values as determined by county officials for any class of property; to visit annually the several counties of the State for the purpose of acquiring basic information as to property values; to investigate the methods adopted and the character of administration enforced by the board of county assessors; to assist the comptroller general; and to recommend changes in tax laws through the comptroller-general to the general assembly.[b]

Disputes with respect to assessments of taxes arising between corporations and the comptroller general, or between taxpayers and "county boards of tax assessors," are subject to arbitration.[c]

The governor, with the assistance of the comptroller general, is required to "levy" the state tax rate. When this has been done and the comptroller general has determined the assessments, notice, a copy of which must be published, is sent to the tax collector and the "levy" is then completed.[d]

Assessments, except those made by the comptroller general, are equalized within the counties by "boards of county tax assessors" and between the counties by the tax commissioner.[b] Boards of county assessors are appointed by boards of county commissioners. They are required to assess omitted property and have a large degree of inquisitorial power.[b]

State taxes on public-service corporations are collected by the comptroller general;[e] other taxes are as a rule collected by county tax collectors.[f]

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[a] Code, secs. 243, 988–990, 1021, 1031–1033, 1038.

[b] Laws, 1913, p. 123.

[c] Code, secs. 1045–1046; Laws, 1913, p. 123.

[d] Ibid., secs. 914–915, 1010–1012.

[e] Ibid., sec. 988–990.

[f] Ibid., sec. 1211.

Sources of revenue in Georgia:

Municipal and local districts.—(*a*) General property tax; (*b*) poll tax for street work; (*c*) business licenses and taxes.

County.—(*a*) General property tax; (*b*) poll tax for road work; (*c*) business taxes and licenses; (*d*) fines, fees, etc.

State.—(*a*) General property tax; (*b*) poll tax; (*c*) business taxes and licenses; (*d*) inheritance tax; (*e*) fines, fees, etc.

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION.[a]

Neither the general assembly, nor any nor all other departments of the government, shall ever have the authority to irrevocably give, grant, limit, or restrain the right of taxation, and all laws or actions to effect any of these purposes shall be null and void; and the said right of taxation shall always be under the complete control of, and revocable by, the State, notwithstanding any gift, etc., of the general assembly.[b]

"All taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."[c]

"The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State shall be a party."[d]

"The general assembly may, by law, exempt from taxation all public property; places of religious worship or burial; all institutions of purely public charity; all buildings * * * used as a college, * * * or other seminary of learning; the real and personal estate of any public library * * *; paintings and statuary of any company or association kept in a public hall, and not held as merchandise or for purposes of sale or gain: Provided, the property so exempted be not used for purposes of private or corporate profit

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[a] Except as otherwise indicated, references are to the constitution of the State as contained in the Code of Georgia, 1910.

[b] Constitution, 1877, Art. IV, sec. 1, par. 1.

[c] Ibid., Art. VII, sec. 2, par. 1.

The legislature or municipal authorities may classify all subjects of taxation exclusive of property, and may tax or exempt any or all such classes with a uniform rate upon the whole of each class taxed. Taxation on property must be upon all not exempted in the constitution, with a uniform rate upon all kinds. An ordinance imposing one rate upon realty, another on one kind of personalty, and a third on another kind, is void. Mayor, etc., of Savannah *v.* Weed et. al., 84 Ga., 683 (1890).

A provision in a tax act (1902, p. 30) that if the revenue derived from the ad valorem tax on a corporation engaged in a given business, together with all taxes on its franchises, does not amount to 2½ per cent of the gross receipts from such business, the corporation shall pay, as an occupation tax, such a per centum upon its gross receipts as will, when added to the ad valorem taxes, state and county, including all taxes on franchises, be equal to 2½ per cent upon the gross receipts, is lacking in uniformity and invalid. Wright *v.* Southern Bell Tel. & Tel. Co., 127 Ga., 227 (1906).

It is within the constitutional power of the General Assembly of this State, in the imposition of specific taxes upon occupations, to classify the subjects of taxation, taxing some and omitting to tax others; and the principle of uniformity required (Const., art. 7, par. 1, sec. 2) is not violated so long as a given tax is made uniform upon all individuals belonging to the particular class on which it is imposed. Singer Mfg. Co. *v.* Wright, 97 Ga., 114 (1895).

[d] Constitution, 1877, Art. VII, sec. 2, par. 5.

or income. The General Assembly shall, further, have power to exempt from taxation, farm products including baled cotton, grown in the State and remaining in the hands of the producer, but not longer than for the year next after their production." [a]

"All laws exempting property from taxation, other than the property herein enumerated, shall be void." [b]

"The levy of taxes on property for any one year by the General Assembly for all purposes, except to provide for repelling invasion, suppressing insurrection, or defending the State in time of war, shall not exceed five mills on each dollar of the value of the property taxable in the State." [c]

"The powers of taxation over the whole State shall be exercised by the General Assembly for the following purposes only. For the support of the state government and the public institutions. For educational purposes, in instructing children in the elementary branches. * * * To pay the interest on the public debt. To pay the principal of the public debt. To suppress insurrection, to repel invasion, and to defend the State in time of war, etc. * * *" [d]

STATUTES. [e]

General Property Tax.

All corporations, domestic and foreign, are subject to the general property tax for both state and local purposes. That portion of the general property tax collected from public-service corporations for state purposes is paid to the State; that portion collected from public-service corporations for local purposes, like the entire general property tax collected from other classes of corporations and from individuals, is paid locally. [f]

The statute requires all taxable property to be assessed at fair market value or at that value which attaches to property when sold in the usual manner for cash. [g] In practice, however, property

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[a] Constitution, 1877, Art. VII, sec. 2, par. 2, as amended in 1912.

[b] Ibid., Art. VII, sec. 2, par. 4.

Under this constitution the general assembly can not lawfully either expressly exempt from taxation or accomplish this result by a failure to tax any property except that which in the constitution itself the general assembly is expressly authorized to exempt. The general assembly has no power to declare that an occupation or business tax shall be levied upon certain classes of corporations, which when collected shall be received in lieu of all other taxes upon the property of such corporation. All property of every nature whatsoever, except that which the constitution expressly declares the general assembly has power to exempt within the limits of the State, is not only subject to taxation but must be taxed. Atlanta National Bldg. & Loan Ass'n *v.* Stewart, 109 Ga., 80 (1900).

[c] Constitution, Art. VII, sec. 1, par. 2.

[d] Ibid., Art. VII, sec. 1, par. 1.

[e] Except as otherwise indicated, the references given herein are to the Code of Georgia, 1910.

[f] Code, secs. 914, 915, 987, 988, 1019, 1031, 1036, 1211.

[g] Ibid., secs. 1004, 1010; Laws 1913, p. 123.

is assessed at approximately 60 per cent of fair market value.[a] The property of public-service corporations is assessed annually by the comptroller general, and all other taxable property is assessed annually by local officials.[b]

Lands and improvements are not separately assessed. The term "real estate" includes lands and the buildings thereon, fixtures attached to either or any interest therein.[c] The term "personalty" includes shares of stock, franchises, and all things having or representing value which are not included in the term "real estate."[d] The tax rate on property for state purposes is limited by the constitution to 5 mills.[e]

The value of property belonging to public-service corporations assessed by the comptroller general is apportioned to the counties wherein the property is situated.[f] The situs for taxation purposes of real property belonging to other corporations is its location. If the real estate upon which a manufacturing or other business enterprise is carried on, lies across county lines, it is taxed in the county where the main building containing machinery, or most of the main buildings, are located, and the personal property used in connection therewith is taxed at the same place as the real property;[g] but money, notes, and accounts of such corporations may be returned where the principal office in the State is located. Moneys and credits are taxable.[h] Bona fide debts are not deductible from credits.

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[a] Interview with state tax officials, October, 1914.

[b] Code, secs. 987, 988, 1020.

[c] Ibid., sec. 3617.

[d] Ibid., sec. 3646.

[e] Constitution, Art. VII, sec. 1, par. 2; Code, sec. 915.

[f] Code, secs. 988, 1023, 1038.

[g] Ibid., secs. 987, 1069.

The legislature may provide in which county the returns of single tracts of lands or manufacturing plants divided by county lines shall be made. County of Walton *v.* County of Morgan, 120 Ga., 548 (1904).

[h] Code, secs. 987, 1003.

A foreign corporation had a place of business in Georgia in the charge of an agent of limited authority. The goods used in the business were shipped from outside the State to Augusta and were then sold. Some of the sales were on credit, and to parties living in both Georgia and South Carolina, the notes taken in the course of business being forwarded to the principal office and paid either there or through the local agency; and when the notes and accounts were collected in Augusta the amounts realized were sent immediately to the principal office. Held, that these notes and credits were subject to state and county taxation at Augusta. Armour Packing Co. *v.* Clark, 124 Ga., 369 (1905). See also Armour Packing Co. *v.* Augusta, 118 Ga., 552 (1903).

Property devoted to public uses, to educational, religious, charitable, and burial purposes, is exempt from taxation; also all farm products remaining in the hands of the producer, but not longer than for the year next after their production.[a]

Capital-Stock, License, or Occupation Taxes.

Domestic corporations pay locally for state purposes a capital-stock or an annual-license or occupation tax, hereinafter referred to as the capital-stock tax. Foreign corporations having a place of business within the State, except insurance and sewing-machine companies, pay this tax for state purposes to the comptroller general. With respect to foreign corporations having no place of business within the State, but having representation through agencies, it is payable either by the agent or by the corporation. The rate is graduated from $10, when the authorized capital stock does not exceed $10,000, to $200, when in excess of $1,000,000.[b]

The president of any public-service or public-utility corporation doing business in Georgia, if a resident, or the superintendent or resident official in charge, if the president is a nonresident, pays for state purposes an annual tax of $10.[c] The tax is payable locally if the corporation represented is a domestic corporation and to the comptroller general if a foreign corporation.[d]

Mercantile, manufacturing, and miscellaneous corporations conducting certain lines of business specified by statute, pay locally for state purposes annual license taxes.[e]

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[a] Code, sec. 998; Laws 1913, p. 122.

[b] Code, sec. 950, as amended Laws, 1913, pp. 34–35; sec. 951.

A specific tax levied under the statute of Georgia upon persons engaged in the conduct of a particular business is not violative of par. 3, sec. 8, of Art. I of the Constitution of the United States, as being an interference on the part of the State with commerce between the several States, where the property employed in such business has been brought into the State and has itself become subject to taxation therein. Singer Manufacturing Co. *v.* Wright, Comptroller General, 97 Ga., 114 (1895).

[c] Code, secs. 919–920, 977. Also interview with state tax officials, October, 1914.

[d] Code, sec. 977.

[e] Ibid., secs. 922–984.

Railroads.

Steam, street, and electric railroads, domestic and foreign, unless exempted,[a] pay to the State the general property tax for state purposes and locally for local purposes on all property, including franchise value.[b] In addition domestic corporations pay locally and foreign corporations pay to the State for state purposes the capital-stock tax.

Railroad property is classified for purposes of taxation as "located" and "distributable." Located property[c] is subclassified as: "Sidetrack," which includes all track paralleling the main track and connected thereto at either end; "main track," which includes the right of way, rails, and all right-of-way superstructures on the principal track of any main stem, branch, or division connecting two or more cities; and "real estate," which includes buildings, stations, shops, grounds, and real estate other than right of way. Distributable property is subclassified as "personal property," which includes rolling stock, tools, moneys, etc.; and "franchise," which includes all intangible values not reported to the comptroller as "personal property."

The statute provides no specific method of assessment, but in practice a railroad system is valued as an entirety, usually by

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[a] "Under charters granted by the State there are three railroads claiming exemptions from ad valorem taxation—the Georgia Railroad & Banking Co., the Southwestern, and the Augusta & Savannah." Report of the Comptroller General, State of Georgia 1912, p. 10. See Wright *v.* Georgia R. R. & Banking Co., 216 U. S., 420 (1910).

That some of the railroads can not constitutionally be taxed upon their property beyond a specified percentage upon their annual income, does not hinder the legislature from taxing all other railroad companies ad valorem upon their property, the former being also taxed up to the limit established by their charters. Atlanta & F. R. C. *v.* Wright, 87 Ga., 487 (1891).

[b] Code, secs. 988, 1019, 1031, 1036, 1039.

Following the ruling in city council of Augusta *v.* Central Railroad, 78 Ga., 119, there is no authority vested in any municipality in this State to levy and collect an occupation tax upon a commercial railroad doing business in such municipalities, and such a railroad which maintains a warehouse merely for the purpose of receiving, etc., goods for shipment, is not subject to a municipal ordinance levying an occupation tax upon warehousemen. Town of Arlington *v.* Central of Georgia Railway Co., 127 Ga., 721 (1907).

[c] Stock in a nonresident corporation owned by a domestic railroad company is taxable for county and municipal purposes in that county and city wherein the principal office of such corporation is fixed by its charter or by law. Such property is "located" property in the meaning of the law of this State providing the machinery for distributing the property of railroad companies for county and municipal taxation. Greene County *v.* Wright, 126 Ga., 504 (1906).

capitalizing its net earnings at 6 per cent, consideration also being given to the value of its stock and bonds. The taxable value in Georgia is then determined by taking that proportion of the entire value which the value of the property in the State bears to the value of the property wherever located. This calculation is based either on the proportion which the main-track mileage within the State bears to the total main-track mileage, or on that percentage of the entire net earnings represented by the net earnings within the State.[a] From the result is deducted the value of all "located property" and all "personal property." The remainder is taken as the value of "franchise."

The valuation per mile of sidetrack and of main track is then determined separately for each main stem, branch, or division, and the number of miles of each kind of track in the State, or in any county, city, or town, multiplied by its respective valuation per mile equals the assessable value therein. The value of other "located property" is assigned directly to the county, city, or town wherein it is located. The proportion of rolling stock taxable in Georgia is determined on the main-track mileage basis,[b] and it, with franchise value and value of all other "distributable property," is apportioned to the counties, cities,[c] or towns on the basis of the value of track and all other "located property" in each, namely, if the value of located property in a given county is 15 per cent of the total value of located property in the State, 15 per cent of the distributable property would be apportioned to such county.[d]

The valuations made by the comptroller general are based on the best information obtainable including data contained in annual reports from the companies. These reports show among other items the value of the aggregate property, of the stock and bonds,

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[a] Interview with state tax officials, October, 1914.

[b] Code, sec. 1031.

[c] Where a city grants permission to an electric railway company, exclusively engaged in the transportation of interstate freight and passengers, to use certain of its streets by running its cars over the tracks of a local street railway company, it can not impose a specific annual tax on the business of such railway company for running its cars in the city's streets. Such a tax is laid on the business of carrying on interstate commerce, and amounts to a regulation of it, which under the Federal Constitution belongs solely to Congress. City Council *v.* Augusta & Aiken Ry. Co., 130 Ga., 815 (1908).

[d] Code, secs. 874, 1023, 1038, 1541.

The proportion which the value of the property of railroad companies situated in municipalities bears to the value of the entire property is, under the statute, determined by the return, and can not be altered by the comptroller general. City of Atlanta *v.* Wright, 119 Ga., 207 (1903).

of the real estate and track bed, of the rolling stock, of the franchises, and other information necessary to arrive at a fair valuation of the property.[a]

Express and Car Companies.

Domestic and foreign express companies pay to the State for state purposes and locally for local purposes the general property tax on all property, including franchise value.[b] Car companies pay no local tax, but pay to the State for state purposes the general property tax on the value of cars and of franchise. In addition, both express and car companies pay the capital-stock tax above treated.

These companies are assessed by the comptroller general in practically the same manner as above described with respect to railroads. The proportion of the entire value of the property taxable in Georgia is determined on the route mileage or net-earnings percentage basis.

The "localized" property of express companies consists of horses, wagons, office fixtures, and real estate used for warehouse, stable, or like purposes, and the franchise value is found by deducting from the entire value of the property taxable in Georgia the value of real and personal property reported to the comptroller. The franchise value is distributed to the counties, cities, or towns, in that proportion which the value of "localized" property in each bears to the entire "localized" property in the State.[c]

The taxable value of cars belonging to car companies is determined on the proportional basis as follows: The value and route mileage of cars operated within the State and their value and route mileage within and without the State, are separately reported, and that proportion of the entire value which the route mileage within the State bears to the total route mileage equals the taxable value of the cars.

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[a] Code, secs. 988, 1020, 1032, 1036.

[b] Ibid., secs. 988, 1020.

[c] Ibid., secs. 1023, 1038.

Sec. 1030, which allows the amount of an occupation tax imposed by a municipality, paid by a corporation liable for a franchise tax to go in reduction of the amount due to the municipality on its franchise tax, is not limited to corporations that pay occupation taxes in consideration of the exclusive use of a franchise, but applies generally to such as are subject to a franchise tax, and that have paid a municipal occupation tax for exercising the franchise. The act of 1903 (Code, sec. 1030) does not violate Art. 7, sec. 2, par. 1, because it allows a corporation to deduct from the municipal tax on its franchise the amount paid by such corporation to the municipality as an occupation or privilege tax or charge for exercising the franchise. State *v.* Southern Express Co., 133 Ga., 113 (1909).

There is no apportionment to the counties and minor taxing districts, since, as above stated, the entire tax on the cars and on the franchise is paid to the State for state purposes.[a]

Annual reports showing the value and location of all property owned are required from express and car companies.[b]

Telegraph, Telephone, Electric Light and Power, Gas, and Water Companies.

Telegraph, telephone, electric light and power, gas, and water companies, domestic and foreign, pay to the State for state purposes and locally for local purposes the general property tax on all property, including franchise.[c] In addition they pay the capital-stock tax above treated.

These companies are assessed by the comptroller general. The value of franchise[d] is determined in the same manner as described with respect to railroads. The "located" property of all, except gas and water companies, is classified as pole and one wire, additional wires, real estate, and personal property. The values of pole and wires are reduced to separate valuations per mile, and the number of miles of pole or wires in any county, city, or town, multiplied by their respective valuations per mile, equals the taxable value of each therein. The value of franchise is distributed to the counties and minor taxing districts on the basis of the value of "located" property therein.[e]

The property of gas and water companies usually is located within the limits of some minor taxing district, and for this reason, the value of their franchises is seldom subject to distribution; but when such property does extend beyond the limits of the minor taxing district the franchise value is apportioned on the same basis

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[a] Code, secs. 988, 989, 990, 1019, 1021.

[b] Ibid., secs. 988, 1020.

[c] Ibid., secs. 988, 1023.

[d] In an action to restrain the collection of the tax on the franchise of the Western Union Telegraph Co. in Georgia, valued at $950,000, held that whatever franchise or right a telegraph company acquires from the United States by its acceptance of act of July 24, 1866, chap. 230 (14 Stat., 221) giving such companies the right to use the military or post roads of the United States, etc., is exempt from taxation by a State.

Where the net profit of a telegraph company for a year on all its business within a State and passing into, from, or through the State, was less than $2,000, the valuation of its franchise by the State for taxation at $950,000, in addition to a tax upon all its tangible property, was excessive, discriminatory, and unjust. Western Union Telegraph Co. *v.* Wright, Comptroller General, 185 Fed. Rep., 250 (1910).

[e] Code, sec. 1023.

as is the franchise value of the other corporations above treated.[a] Each company of the above-mentioned classes is required to report to the comptroller general the value of its stocks and bonds, the value and location of its property, and other information specified by statute.[b]

Steamboat Companies.

Steamboat companies naving their principal place of business in Georgia pay to the State for state purposes and locally for local purposes the general property tax on tangible property only.[c] Assessment is by the comptroller general. They are probably taxable in theory on franchise, but in practice this is not attempted.[d] The situs for taxation of ships is where their principal place of business is located.[e] Other property is taxed where located. If they have no principal place of business within the State they are not taxed in Georgia.

Mercantile, Manufacturing, and Mining Corporations.

Mercantile, manufacturing, and mining companies pay locally the general property tax for both state and local purposes. In addition, domestic corporations of these classes pay locally for state purposes and foreign corporations pay to the State for state purposes the capital-stock tax above described.[f] Specified lines of manufacturing and of mercantile business are also subject to certain license taxes based usually on amounts fixed according to the kind of business transacted, but sometimes graduated according to the population of the county, city, or town wherein the companies operate.[g]

Assessments are by local officials based on statements made to the receiver of tax returns. Such statements made by a manufacturing company include the value of real estate, machinery,

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[a] Code, sec. 1023.

[b] Ibid., secs. 988, 1020.

[c] Interview with state tax officials, October, 1914. Code, sec. 988.

[d] Code, sec. 1019. Interview with state tax officials, October, 1914.

[e] A nonresident's interest in a boat is not taxable by a municipality where it docks and is registered in port. Wright *v.* Mayor and Council of Brunswick, 140 Ga., 231 (1913).

Where a navigation corporation is chartered under the laws of this State, and it appears that its principal office and place of doing business (that is, its domicile) is fixed in a named municipality, the taxable situs of a vessel owned by the corporation is in such municipality. St. Simons Transit Co. *v.* Brunswick, 141 Ga., 477 (1914).

[f] Letter of Comptroller General, Dec. 21, 1914.

[g] Code, secs. 921–984.

raw materials, manufactured goods, and other property on hand during the day fixed for returns of such property.[a]

Stockholders and Bondholders.

Shares of stock of the corporations whose property is taxed in the State are not taxed to the holders.[b] Bonds are taxable,[b] but, in practice are seldom reached. Public bonds of State, counties or municipalities, are not taxable.[c]

Foreign Corporations.

Foreign corporations of the classes herein treated are taxed in practically the same manner as similar domestic corporations.

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[a] Code, secs. 987, 1064, 1069.

[b] Ibid., sec. 1087.

The constitution and laws of Georgia do not exempt from taxation shares of stock of a railroad corporation of another State held by a Georgia railroad corporation. Wright *v.* L. & N. R. Co., 195 U. S., 219 (1904). Such stock is taxable in Georgia, even though held outside the State as collateral to secure an issue of bonds. Central Ga. Ry. Co. *v.* Wright, 124 Ga., 630 (1906).

The general assembly not being required by the constitution to impose a tax on shares of stock in domestic corporations where the property of such corporations is taxed to the company, the failure of the general assembly to impose such a tax, while imposing a tax upon shares in foreign corporations, is not, as to the owners of shares of the latter class, a violation of the state constitution. Ga. Railroad & Banking Co. *v.* Wright, 125 Ga., 589 (1906).

Stock in a nonresident railroad corporation owned by domestic railroad company is taxable for county and municipal purposes in that county and city wherein the principal office of such domestic corporation is fixed by its charter or by law. Greene County *v.* Wright, 126 Ga., 504 (1906).

A corporation whose principal office is in the city of Atlanta is not liable to the city for taxes on shares of capital stock which it holds in other domestic banks. City of Atlanta *v.* Bankers Financing Co., 130 Ga., 534 (1908).

No law has been enacted since the decision in Georgia Railroad Co. *v.* Wright, 125 Ga., 589 (1906), providing for the taxation of shares of stock in domestic manufacturing corporations whose property is required to be returned for taxes. While the State may tax such shares if it desires to do so the above decision and the statutes therein referred to and subsequent enactments providing in substance as set forth in sec. 10, act of 1909, pp. 36–65, indicate the adoption of a policy by the State not to tax them. In the absence of any legislation expressly authorizing it, shares of stock of such companies would not be taxable. City of Albany et al. *v.* Brown et al., 137 Ga., 796 (1912).

[c] Code, sec. 1016.

Bonds issued by a municipal corporation in the hands of a resident of the State are not taxable by this State or any county thereof. There is no law in Georgia expressly declaring that the bonds of the State, or its various political subdivisions, are subject to taxation either by the State or any county. Penick *v.* Foster, 129 Ga., 217, (1907).

III. FINANCIAL RESULTS.

Classification of Revenue.

The proportion of total state taxes for state purposes derived from corporations for 1912 was approximately 22 per cent.

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED DECEMBER 31, 1912.[a]

Total state receipts, all sources		$5,790,491.34
State taxes from corporations:		
Steam railroads	$545,133.63	
Street railways	82,872.56	
Sleeping-car companies	3,839.95	
Express companies	6,096.03	
Telegraph companies	5,312.85	
Telephone companies	34,097.32	
Gas and water companies	20,547.24	
Electric light and power companies	16,993.49	
Steamboat and steamship companies	13,292.28	
Railroad news companies	540.00	
Banks [b]	184,179.30	
Corporation (capital stock) tax	46,917.32	
Insurance companies, taxes and fees	214,875.12	
Total ascertainable state taxes from corporations		1,174,697.09
Other taxes:		
General property tax [c] (less $184,179.30 above estimated)	3,119,352.25	
Poll tax	296,456.58	
Dog tax	92,612.40	
Back tax	17,501.88	
Near-beer licenses	243,540.00	
Billiards, pool, games, etc	47,018.89	
Locker tax	37,980.00	
Cigarette dealers	29,050.38	
Amusement licenses	18,994.00	
Soft drinks, etc., licenses	12,631.93	
Automobile agents	11,565.00	
Game-protection funds	8,500.00	
Pistols, dealers, etc	7,717.50	
Other business licenses	48,304.23	
Fertilizer fees, inspection tax	70,722.13	
Oil fees, inspection tax	34,179.39	
Total state taxes not from corporations		4,096,126.56
Total taxes for state purposes, all sources		5,270,823.65

[a] Report of Comptroller General, 1912, pp. 18–19.

[b] Estimated by applying the state rate of 5 mills to the assessed values as shown in Report of Comptroller General, 1912, p. 184.

[c] Part of this comes from local taxation of corporations, but it is practically impossible to ascertain the amount thus received, except the amounts above estimated, which are not included in this item.

Receipts from sources other than taxes:		
Rental W. and A. R. R.	$420,012.00	
Northeastern R. R.	3,745.00	
Dividends on stocks	2,782.00	
Sale of farm products	28,678.73	
Sale of books, laws, etc.	17,032.22	
Pure food fees	16,697.29	
Office fees	19,258.18	
Interest on deposits	9,352.71	
Clerks costs, etc.	1,836.00	
Miscellaneous receipts	273.56	
Total reeeipts from sources other than taxes		$519,667.69
Total state receipts, all sources		5,790,491.34

IV. COMMENTS.

Historical.

The first tax act of the State, passed in 1783, provided for specific taxes on lands. An act of 1785 continued this system and classified lands as "swamp," "pine," "oak," etc., and placed an arbitrary valuation per acre on each class. By an act of 1804 town lots were taxed according to their value, but other lands were taxed according to their class.[a] Banks in 1805 were taxed on capital and on the amount of bills issued. This was probably the first tax of its kind in the United States.[b] A tax was imposed on the capital stock of the Steamboat Company of Georgia in 1820.[c]

No important tax laws affecting corporations of the classes treated herein appear to have been enacted prior to the enactment of a general tax law in 1850. Since that date general tax laws have been reenacted practically every two years. These were gradually broadened in scope until most every class of property was included. Under the general tax law of 1850 the Georgia Railroad was required to pay a tax of one-half of 1 per cent on the net annual income of the stock of the road and its branches; the Georgia Railroad and Banking Co. 31¼ cents on each $100 of the increase of its capital stock authorized that year; the Central Railroad one-half of 1 per cent on its net annual income; and the Macon & Western Railroad 31¼ cents on each $100 of paid-in capital stock.[d] In 1854 all railroads, except those exempted by

[a] Laws 1804, p. 71; also Taxation in the Southern States, Chas. M. Candler, State and Local Taxation, 1909, pp. 53, 56.

[b] Laws 1805, p. 20. Johns Hopkins University Studies in Historical and Political Science, vol. 18, p. 221.

[c] Laws 1820, p. 81.

[d] Laws 1850, p. 378.

their charters, were required to pay a tax on the whole amount of capital stock and assets.[a] Owners of stock in mining companies in 1856 were made taxable on their holdings in the county where the company was situated.[b]

In 1858 railroads were taxed for state purposes at the rate of one-half of 1 per cent on net annual income and express companies at the rate of 1 per cent on gross annual profits.[c] A graduated income tax was imposed in 1862[d] on individuals and corporations when the net income or profits arising from the sale of merchandise or liquors, from the manufacture of cotton, woolen, or leather goods, or from tanning, or the distillation of liquor, equaled 20 per cent or more of capital invested. The rate increased correspondingly with the ratio of profits to capital invested. This law was amended by the next legislature so as to include express, railroad, and insurance companies, and the exemption of income up to 20 per cent was decreased to 8 per cent.[e] The tax was again extended in 1865, so as to include individuals and corporations engaged in farming, in the sale of real estate and cotton and other specified articles, and in the manufacture of flour, sugar, woodenware, and various other commodities.[f]

In addition to the ad valorem taxes, certain specific taxes were provided for in 1866, the most important of these relating to polls and liquor.[g] The tax on cotton held as merchandise was repealed in 1866.[h]

Telegraph, sleeping-car, and express companies were taxed on gross earnings in 1874,[i] and railroad companies were required to value separately and return to the comptroller general, without deducting indebtedness, each class or species of property, which was taxed at the state rate for state purposes only,[j] as it was judicially held that this act embraced every character of railroad property owned by the company, and that taxation under it relieved the property from local taxation.[k]

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[a] Laws 1853–54, p. 110.
[b] Laws 1855–56, p. 275.
[c] Laws 1858, p. 105.
[d] Laws 1862–63, p. 176.
[e] Laws 1863–64, p. 80.
[f] Laws 1864–65, p. 65.
[g] Laws 1865–66, p. 253.
[h] Laws 1866, p. 169.
[i] Laws 1874, p. 101.
[j] Acts 1874, p. 107.
[k] Savannah, F. & W. Ry. *v.* Morton, 71 Ga., 25 (1884); Savannah *v.* Atlantic & G. R. Co., 21 Fed. Cases, 548 (1879).

In 1883,[a] property of a railroad company, not used in its usual and ordinary business, was made taxable by the counties and municipalities like the property of individuals. All property of railroads was made taxable for county purposes in 1889,[b] for municipal purposes in 1890,[c] and for local school district purposes in 1906.[d] Assessment and apportionment were made by the comptroller general.

The act of 1889 divided the property of railroad companies into located and unlocated property. The located property was made taxable in the county where situated and the value of unlocated property was distributed for taxation to the counties in proportion to the amount of located property therein.[e] This act also included provisions for the taxation of the property of street and electric railroads.

Taxation of Franchises.

As previously stated under "Statutes," Georgia taxes franchise, which is defined as including every right and privilege exercised within the State under the power of eminent domain, or for the use of any public highway or street, or the land above or below any highway or street, and every special right exercised within the State granted by charter, resolution, by-law, statute, or otherwise, for the exercise of any public service, not including the mere right to be a corporation by trading or manufacturing, or other corporation exercising no special franchise. The wording of this law which was enacted in 1902[f] may suggest that the taxation of "special franchises" only is contemplated. In practice, however, all value in excess of the physical property value is included in the assessment of public-service or public-utility corporations. The law also provides for the separate valuation of franchise and for its taxation under the general property tax. The amounts assessed as franchise under this law, and the aggregate assessments against

[a] Acts 1882–83, p. 41.

[b] Acts 1889, p. 29.

[c] Acts 1890, p. 152.

[d] Act of August 21, 1906, p. 61.

[e] Georgia Railroad & Banking Co. *v.* Wright, 125 Ga., 589, 607 (1906).

Neither counties nor municipal corporations had, prior to the act of October 16, 1899, providing a system for the taxation of railroad property by counties, any statutory authority either to tax such property within their territorial limits; nor was there any machinery provided by the legislature for them to assess and collect taxes on such property. State et al. *v.* Savannah, F. & W. Ry. Co., 111 Ga., 803 (1900).

[f] Laws 1902, p. 37.

corporations subject thereto, except steamship corporations,[a] are shown for a period of years in the following table:

Year.	Franchises.	Aggregate value of corporate property.	Year.	Franchises.	Aggregate value of corporate property.
1902[a]	.....	$56,893,466	1909[f]	$25,024,136	$120,679,989
1903[b]	$14,455,508	71,654,074	1910[g]	25,286,429	124,237,017
1904[c]	15,011,369	73,863,476	1911[g]	25,946,214	131,729,830
1906[d]	19,187,487	90,832,187	1912[h]	26,757,719	138,021,114
1907[e]	27,861,426	123,757,297	1913[h]	27,883,310	144,189,723
1908[f]	24,658,825	119,573,250			

[a] Report of Comptroller General, 1902, p. 224.
[b] Ibid., 1903, p. 276.
[c] Ibid., 1904, p. 259.
[d] Ibid., 1906, p. 264.
[e] Ibid., 1908, p. 302.
[f] Ibid., 1909, p. 305.
[g] Ibid., 1911, p. 336.
[h] Ibid., 1913, p. 343.

Suggested Changes in the Taxation System.

Commenting on the revenue system in 1912, the comptroller general stated that the existing machinery for assessing property for taxation permits much of the taxable property of the State to entirely escape taxation, and a very much larger proportion to evade its just and equitable part thereof; that the resulting burden of inequality affects equally the property of individuals and of corporations; and that in adjoining counties property assessments, which under like conditions should be practically the same, vary very widely in many cases. He stated that all taxation should be uniform and that a system of assessing property should be provided to accomplish such uniformity as far as possible. He commented also on the small amount of intangible personal property, such as notes, mortgages, accounts, stocks, bonds, and choses in action returned for taxation, stating at the same time that this class of property represents a considerable part of the wealth of the State, and that the present system of taxation is but little better than a voluntary system of contributions.[b]

The three following changes were suggested by another state official at an earlier date.[c]

First. The repeal of the constitutional requirement that all property subject to taxation shall be taxed ad valorem, because

[a] No franchise assessments against steamship companies have so far been made. Interview with state tax officials, October, 1914.

[b] Report of Comptroller General, 1912, pp. 13, 14.

[c] Taxation in the Southern States, Charles M. Candler, State and Local Taxation, 1909, pp. 67, 68.

at present it is impossible to fairly or ratably tax corporate property.

Second. The subjects of state and local taxation should be segregated, reserving to the State the right to tax public-service corporations, insurance, inheritance, and to levy occupation taxes on all corporations, with a fair proportion of the revenue secured from public-utility corporations to be allotted to the localities from which they have secured franchises. The subject of exclusive local taxes should embrace real and personal property of every kind and all business licenses.

Third. A change in the assessment or listing procedure, or rather, absolute assessment by state and local boards, in lieu of voluntary returns and arbitration of particular assessments.

Equalization of Taxes.

The governor in his inaugural message of 1913 commended to the attention of the legislature the importance of proper equalization in assessments, stating that it could not be denied that injustice is done when one man pays his taxes on 10 per cent of the value of his property while another pays on 50 per cent.[a]

Provision was made by the legislature at this session for the equalization of assessments within each county by creation of local boards of equalization and between the various counties of the State by the creation of the office of state tax commissioner.[b] The county boards of tax assessors examine the returns of each taxpayer and see that all taxable property is assessed at a valuation so that each taxpayer shall pay only his proportionate share of the taxes. The state tax commissioner is required to examine the returns of property in each county and equalize them by classes between counties in such a manner as may appear just to him.

Appeals may be taken from the action of both the local boards and the state officials to a board of arbitrators, one to be appointed by the assessing official, another by the party assessed, and the third by the two arbitrators previously appointed.

Relative Taxes Paid by Corporations.

An analysis of the sources of state revenue by a state official, in 1908, showed that taxation absorbed a larger percentage of the gross farm value of crops than of the gross revenue of public-

[a] Inaugural Message of the Governor, 1913, p. 19. [b] Laws 1913, p. 123.

service corporations. Thus the gross state taxes paid: By express companies was approximately 0.68 of 1 per cent of their gross revenue; by telephone companies, 0.82 of 1 per cent; by telegraph companies, 0.83 of 1 per cent; by street railroad companies, 1.06 per cent; by railroad companies, 1.19 per cent; and by banks, 1.5 per cent; whereas, taxes paid by the agricultural interests of the State amounted to 1.55 per cent of the gross farm value of all the crops grown in the State in 1908.[a] As an example of the low valuation at which the property of certain corporations has been assessed, this official stated that in 1902 the street railroad property in Georgia was assessed at $3,900,000, while the outstanding mortgage bonds on the same property at the same time equaled $19,700,000; that in 1908 the entire tax valuation of all the street railroads of the State was only $12,700,000, while the outstanding mortgage bonds of one corporation alone exceeded the aggregate returns from street railroad companies.[b]

Full Value Assessment.

In an open letter[c] to the people of the State, from which abstracts are here given, the state tax commissioner discusses the effect of undervaluation of property for taxation purposes.

He states that justice in taxation can only be obtained when the law is just and when justly enforced; and that if the rule by which property is to be valued and returned for taxation is not universally observed, injustice to the taxpayer is the result. For instance, if half of the taxpayers of a community should return their property for one-fourth of its value and the other half at its fair market value, the effect would be that the former would pay one dollar on his property, while his conscientious neighbor, with property of like value, would pay four times that amount, the result being that the conscientious man has been penalized for doing right, while his neighbor has been rewarded for doing wrong. Again, if all the taxpayers of a community should agree to return their property at an arbitrary rule of undervaluation, say one-seventh of the actual value, the taxing jurisdiction would be compelled to raise the rate seven times what would be necessary if returned at actual value. The low rate would invite prospective investors, while the high rate would repel them.

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[a] Taxation in the Southern States, Charles M. Candler, State and Local Taxation, 1909, p. 63.

[b] Ibid., p. 62.

[c] Letter from state tax commissioner to the people of Georgia, Jan. 12, 1914.

The tax commissioner states that if the people of the State will return their property at its fair market value, as the law requires, the State will be able to pay the current debt and the tax rate can be cut from 5 to 3½ mills. With reference to the omission of property from the tax returns, he states that while the return for taxation on money is less than $25,000,000, the report of the state bank examiner shows there was on deposit in the banks of the State $170,000,000, and that though the return of merchandise is $41,000,000, the report of the insurance department discloses that on merchandise and houses the insurance companies have issued policies amounting to over $426,000,000. The letter concludes by stating that the recent law creating county boards of tax assessors and a state tax commissioner is largely designed to reach the six-sevenths of property in the State which has never been returned, or inadequately returned for taxation, property generally owned by a class of people best able to pay taxes; and that if the volume of property for the extension of taxes be increased and the high tax rate now prevailing be reduced, the appropriations of the legislature will necessarily reflect itself in the tax rate.

Bibliography.

The following is a list of the more important publications, in addition to the constitution, the statutes, and the court reports, of value in the study of corporate taxation in Georgia:

Annual Reports of the State Comptroller, 1902–1913.

Inaugural Address of the Governor, 1913.

Letter of the State Tax Commissioner to the People of the State, January 12, 1914.

Proceedings of the National Tax Association, Address of Charles M. Candler, 1909.

Studies in State Taxation, Taxation in Georgia, Johns Hopkins University Studies in Historical and Political Science, Series XVII, 1900.

FLORIDA.

I. GENERAL VIEW.

Chief Features.

First. The application of the general property tax to nearly all classes of property.

Second. The use of annual license taxes as an additional source of revenue from corporations.

General Property Tax.

Transportation, transmission, manufacturing, and mercantile corporations are subject to the general property tax, collected locally, for both state and local purposes.

Steam railroad, passenger-car, telegraph, and street railroad companies are assessed by an ex officio state board, the valuation then being apportioned to the counties entitled thereto. Express, telephone, and steamboat companies, and public utilities except street railways, are assessed locally, as are also manufacturing, mercantile, and miscellaneous corporations.

Taxes Supplemental to the General Property Tax.

In addition to the general property tax, annual license taxes are collected by the State from the classes of corporations herein treated. Half of such taxes collected from steam railroad, telegraph, and express companies is returned to the counties. All of the tax collected from car companies is retained by the State. With respect to other classes of companies the State retains its collections, but counties and cities or towns may each levy like taxes not in excess of 50 per cent of the state license taxes.

Stockholders and Bondholders.

Shares of stock in a corporation of the classes covered by this report are not taxed in the hands of the holders if the corporation pays taxes upon its capital stock or upon its property. Bonds of corporations are taxable in the hands of the holders.

Foreign Corporations.

Foreign corporations of the various classes herein treated are taxed like domestic corporations of the corresponding class.

Administration.

An ex officio "State Board," composed of the state comptroller, attorney general, and state treasurer, hereinafter referred to as the State Board, assesses steam and street railroad, passenger-car, and telegraph companies.[a] Other corporations of the classes herein treated are assessed locally.

A selected board, the Tax Commission, is composed of three members appointed by the governor and confirmed by the senate for terms of four years.[b] It has no assessing power but exercises general supervision over the administration of the tax laws, over assessors and over boards of county commissioners acting as county boards of equalization, to the end that all assessments of property may be relatively just and equal, at the true and substantial value and in compliance with law.[c] The commission is required to secure from persons, partnerships, and corporations information concerning their capital, indebtedness, assets, liabilities, value of property, earnings, expenses, and other facts, to facilitate ascertaining the value of all kinds of property in the State and relative tax burden borne by each.[d]

The commission may compel the giving of testimony and the production of documents, records, etc.,[e] direct the institution of proceedings to enforce penalties and punishments, and cause complaint to be made to the governor against local officers looking to their removal from office for official misconduct.[f] The commission is required to investigate evasions and to ascertain defects in the law or its administration. Copies of the report made by the commission to the governor containing recommendations for improvements in the tax system are sent to each member of the legislature prior to each legislative session.[g]

The county assessors and county tax collectors are elective officers.[h] Assistant assessors are nominated by the county assessors and appointed by the county commissioners.[i] The county commissioners constitute the county board of equalization with full power to equalize the assessment of real and personal property in their respective counties, and for that purpose only may raise or

[a] Laws 1907, act No. 1, sec. 46.
[b] Laws 1913, act. No. 80, sec. 2.
[c] Ibid., act No. 80, sec. 9, subsec. 1.
[d] Ibid., act No. 80, sec. 9, subsec. 6.
[e] Ibid., act No. 80, sec. 9, subsecs. 7, 8; sec. 10.
[f] Ibid., act No. 80, sec. 9, subsec. 3.
[g] Ibid., act No. 80, sec. 9, subsec. 14.
[h] Gen. Stat., 1906, sec. 172.
[i] Laws, 1907, act No. 1, sec. 12.

lower the value fixed by the assessor on any particular piece of real estate or personal property.[a] Taxpayers may appeal to the county commissioners from an assessment made by a county assessor.[b]

The general property tax is collected by the tax collector in each county.[c] The state license tax is collected from some corporations by the state comptroller, from others by the state treasurer, and from still others by the county tax collectors.[d]

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION.[e]

"The legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes."[f]

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[a] Laws 1907, act No. 10, sec. 2, and act No. 1, sec. 24.

[b] Ibid., act No. 1, sec. 17.

[c] Ibid., act No. 1, sec. 32.

[d] Laws 1913, act No. 1, sec. 5.

Sources of revenue in Florida:

Municipal and local districts.—(*a*) General property tax; (*b*) business taxes and licenses; (*c*) fines, fees, etc.

County.—(*a*) General property tax; (*b*) annual corporation license taxes; (*c*) poll tax; (*d*) business taxes and licenses; (*e*) fines, fees, etc.

State.—(*a*) General property tax; (*b*) annual corporation license taxes; (*c*) business taxes and licenses; (*d*) fines, fees, etc.

[e] Except as otherwise indicated, references are to the constitution of 1885, as contained in General Statutes of the State of Florida, 1906.

[f] Constitution, Art. IX, sec. 1.

The constitutional provisions requiring a uniform and equal rate of taxation, and a just valuation of all property, and that incorporated cities or towns shall impose taxes for municipal purposes and for no other purposes, and that all property shall be taxed for municipal purposes upon the principles established for state taxation, do not prohibit the legislature from making proper and reasonable classifications of property for purposes of municipal taxation, so long as such classifications are not arbitrary, unreasonable, and unjustly discriminating, and apply similarly to all under like conditions and do not violate any other provision of the organic law. Hayes *v.* Walker, 54 Fla., 163 (1907).

Under the provisions of sections 1 and 5 of Article IX of the state constitution, only two classes of taxes can be levied in this State, an ad valorem tax and a tax on licenses.

There is no express limitation upon the power of the legislature for levying a tax on licenses; but such power should not be so exercised as to deprive any person of property without due process of law, or so as to deny to any person the equal protection of the laws. Afro-American Industrial etc. Association *v.* State, 61 Fla., 85 (1911).

The levy of an ad valorem tax upon property, and also a license or occupation tax upon its use, is not double taxation. A license fee for automobiles is not a "tax" within the meaning of the provisions of the organic law requiring uniformity of rates and just valuations of property for purposes of taxation. Jackson *v.* Neff, 64 Fla., 326 (1912).

"The property of all corporations, except the property of a corporation which shall construct a ship or barge canal across the peninsula of Florida, if the legislature should so enact, * * * shall be subject to taxation unless such property be held and used exclusively for religious, scientific, municipal, educational, literary, or charitable purposes."[a]

"No tax shall be levied for the benefit of any chartered company of the State, nor for paying interest on any bonds issued by such chartered companies."[b]

"No person or corporation shall be relieved by any court from the payment of any tax that may be illegal, or illegally or irregularly assessed, until he or it shall have paid such portion of his or its taxes as may be legal, and legally and regularly assessed."[c]

"The legislature shall not pass special or local laws * * * for assessment and collection of taxes for state and county purposes."[d] But such laws "shall be general and of uniform operation throughout the State."[e]

"There shall be exempt from taxation property to the value of two hundred dollars to every widow that has a family dependent on her for support, and to every person that has lost a limb or been disabled in war or misfortune."[f]

"The legislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes, and all property shall be taxed upon the principles established for state taxation. But the cities and incorporated towns shall make their own assessments for municipal purposes upon the property within their limits. The legislature may also provide for levying a special capitation tax, and a tax on licenses. But the capitation tax shall not exceed one dollar a year and shall be applied exclusively to common school purposes."[g]

The legislature is required to provide for the election of county officers, including a county assessor and a tax collector.[h] The

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[a] Constitution, Art. XVI, sec. 16.

[b] Ibid., Art. IX, sec. 7.

[c] Ibid., Art. IX, sec. 8.

[d] Ibid., Art. III, sec. 20.

[e] Ibid., Art. III, sec. 21.

[f] Ibid., Art. IX, sec. 9.

[g] Ibid., Art. IX, sec. 5.

A provision of the state constitution relative to municipal taxation is to the effect that all property shall be taxed upon the principles established for state taxation. Held: That municipal assessments, including the valuations of property for taxation, must observe the principles requiring just valuation of all property, both real and personal, except such as is lawfully exempted, and the assessments must have a fair relation to "uniform and equal rate of taxation." But the valuations included in the assessments are not required to be the same as those used for purposes of state taxation. Merrell et al. *v.* City of St. Petersburg, 64 Fla., 367 (1912).

[h] Constitution, Art. VIII, sec. 6.

legislature is also required to authorize county commissioners, where it is deemed necessary for assessment purposes, to divide counties into taxation districts and appoint an assistant assessor for each district.[a]

"A special tax of one mill on the dollar of all taxable property in the State, in addition to the other means provided, shall be levied and apportioned annually for the support and maintenance of public free schools.[b] * * * Each county shall be required to assess and collect annually for the support of public free schools therein, a tax of not less than three mills nor more than seven mills on the dollar, of all taxable property in the same.[c] * * * The legislature may provide for the division of any county or counties into convenient school districts; * * * and for the levying and collection of a district school tax" of not exceeding three mills on the dollar per annum, whenever a majority of the tax-paying voters of the district are in favor of such levy."[d]

STATUTES.

General Property Tax.

All real and personal property in the State and all personal property belonging to persons resident in the State, not expressly exempted, is declared subject to taxation.[e]

The statutes require the assessment of all property at "its full cash value,"[f] but in practice property is assessed at from 40 to 50 per cent of such value.[g]

Real property, for the purpose of taxation, is construed to include lands and all buildings, fixtures, and improvements

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[a] Constitution, Art. VIII, sec. 7.

[b] Ibid., Art. XII, sec. 6.

This tax, together with other funds, is apportioned among the several counties, according to the average attendance of pupils between the ages of 6 and 21 years. Art. XII, sec. 7, as amended, 1894.

[c] Ibid., Art. XII, sec. 8, as amended, 1904.

[d] Ibid., Art. XII, sec. 10.

[e] Laws 1907, act No. 1, sec. 1.

Appellant included in his tax return to the Florida taxing officers $42,000 in money which he had in Chicago in bank or in the hands of brokers for the purpose of speculation. Later he claimed that he had made a mistake in including this item in the tax return, and contended that the funds were not taxable in Florida, because they were in Chicago and invested in speculation in cotton and grain. Held: As a general rule, if a person is domiciled in a State his personal property has its situs in that State and is taxable there. Appellant admitted that the funds were not assessed in Chicago or elsewhere than in Florida, and that he paid no tax upon them elsewhere. In view of the evidence in the case appellant was domiciled in Florida. The funds in question were taxable there. Hunt *v.* Turner, 54 Fla., 654 et seq. (1907).

[f] Laws 1907, act No. 1, sec. 20.

[g] Interview with tax officials, October, 1914.

thereon.[a] Personal property includes all goods and chattels, moneys and effects, boats and vessels, debts due or to become due from solvent debtors, whether on account, contract, note, or otherwise.[b]

The term "moneys" includes all forms of currency, and all deposits of residents subject to withdrawal on demand.[c] Mortgages must be listed for taxation, except those given for purchase money.[d] Both real and personal property are assessed annually.[e]

Real estate of individuals and of corporations is assessed where located.[f]

Corporations owning water craft are "required to list such property for assessments and taxation in the county in which the same may belong or be enrolled, registered, or licensed."[g]

The assessment of personal property is made separately from the assessment of real estate, but each is responsible for the taxes on the other.[e]

The following property is exempt: Property of the United States and of the State and its minor subdivisions; property of religious, educational, literary, charitable, and scientific institutions, libraries, and agricultural societies, actually used by such institutions;[h] also property to the value of $200 belonging to cer-

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[a] Laws 1907, act No. 1, sec. 2.

[b] Ibid., act No. 1, sec. 3.

The owner of promissory notes or other credits, whether secured by mortgage or not so secured, is liable to be taxed upon the value of such credits.

"It is evident that the legislature intended to assess all credits at their actual value, to wit: The amount of money certain to be realized upon them. By the use of the words 'due from solvent debtors' it was undoubtedly intended to include and mean so much as the debtor or his property would be able to pay. To that extent a debtor is solvent—good for so much money. If a debtor owes ten thousand dollars and his property and means marshal at nine thousand nine hundred, he is 'insolvent.' But was it intended that the creditor should escape taxation upon the ninety-nine hundred because his debtor was thus insolvent, and because he could derive no income from the $100? A debtor is solvent to the extent that he can pay, though insolvent as to what he can not pay. This is the sense in which the phrase 'solvent debtors' is used in the revenue law." Lamar *v.* Palmer, 18 Fla., 147–156 (1881).

[c] Laws 1907, act No. 1, sec. 5.

[d] Ibid., act No. 1, sec. 13, par. 7.

A tax upon notes or obligations secured by mortgage upon land, the land mortgaged also being taxed, does not present a case of double or unequal taxation. Lamar *v.* Palmer, 18 Fla., 147 (1881).

[e] Laws 1907, act No. 1, sec. 12.

[f] Ibid., sec. 6.

[g] Ibid., sec. 10.

[h] Constitution, Art. XVI, sec. 16.

tain widows and certain disabled persons.[a] For taxation purposes, nonbearing fruit trees are not to be regarded as adding any value to the land upon which they are located.[b]

The property of any company "which shall construct a ship or barge canal across the peninsula of Florida" is specially exempted by the constitution.[c]

Railroad Companies.

Railroad companies, domestic and foreign, pay the general property tax locally for state and local purposes.[d] They also pay to the State, for state and local purposes, an annual license tax of $10 per mile of track in the State, including branches, switches, spurs, and sidetracks. One-half of this license tax is distributed by the comptroller to the various counties in which the railroad "may be located, proportioned to the amount of railroad trackage in each county." The tax of $10 per mile is in lieu of all other state and county license taxes, but cities and towns may impose additional license taxes of from $10 to $250, according to their population.[e]

Assessment of railroad property, other than leased or rented real estate not used in daily operations, is made by the State Board composed of the comptroller, attorney general, and treasurer. Physical property is the basis of valuation, the taxed values placed on other property in the State being used as a standard.[f] Each county is considered a unit in assessing all railroad property, and the apportionment, except of rolling-stock values, does not extend beyond the borders of a county, namely, the value of depots and shops with the value of main track, including right of way and superstructures located within a county, is distributed through the minor taxing districts of that county, except that in particular

[a] Laws 1907, act No. 1, sec. 4; constitution, Art. IX, sec. 9.

[b] Laws 1907, act No. 1, sec. 19.

[c] Constitution, Art. XVI, sec. 16.

[d] Laws 1907, act No. 1, sec. 46.

[e] Laws 1913, act No. 1, sec. 43.

The eighteenth section of the internal improvement act (chap. 610, Laws of Florida, act of 1855–56, McClellan's Digest, sec. 21, p. 596) provided that any railroad accepting the provisions of the act should be forever exempt from taxation on its capital stock, and that the property of such roads should be exempt from taxation for the period of 35 years from the completion of the road. Held: A claim that the exemption, under this act, of certain railroad property from taxation, is a continuing exemption which follows the property into whosesoever hands the same may come, can not be maintained. Bloxham *v.* Florida C. & P. R. R., 35 Fla., 625 (1895).

[f] Stock and bond valuation and capitalization of net earnings are not used. Interview with state tax officials, October, 1914.

instances the value of buildings is included in the value of side-tracks, which in no instance is distributed, but is assigned in the minor taxing districts where located. The exception noted only occurs when in the judgment of the State Board the taxing district should receive such benefit from buildings located therein, and this sometimes causes the valuation per mile of side track to exceed the valuation per mile of main track. Franchises or intangible property are not assessed. Rolling stock is assessed separately, and the proportion of the rolling stock of interstate roads taxable in Florida is determined by such a percentage of the whole rolling stock as the main-track mileage in Florida bears to the entire main-track mileage. Apportionment of rolling-stock assessment is made by the comptroller to the counties and the minor taxing districts on the basis of total main, second, and side tracks.[a]

Leased or rented property not used in daily operations is assessed locally.[b]

The roads are required to report the total length of main, branch, switch, spur, and side track, rolling stock, lots not leased or rented, and terminal facilities, in the State, and the length and value thereof in each county, city or town.[c] The reported values are verified for the State by an expert engineer.[a]

Car Companies.

Sleeping or parlor car companies, domestic and foreign, pay the general property tax locally for state and local purposes.[c] They also pay to the State for state purposes an annual tax of 1½ per cent of gross receipts derived from business done between points in the State; and an annual license tax of $5,500.[d] Refrigerator-

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[a] Interview with state tax officials, October, 1914.

[b] Laws 1907, act No. 1, sec. 49. Interview with state tax officials, October, 1914.

[c] Laws 1907, act No. 1, sec. 46.

Sec. 49 provides that "lands or any other real estate" of a railroad company in any county shall be assessed by the county assessor, but sec. 45 provides that when any land has been assessed more than once for the same year's taxation, only the tax justly due shall be collected.

[d] Laws 1913, act No. 1, secs. 44, 45.

In a suit to prevent the collection of the tax on gross receipts, it was argued that this could not be a license tax because the payment of it is not made a condition of the right to do business, because another tax is imposed in terms for a license; and because the history of the law shows that for years it took the place of a property tax. "These considerations undoubtedly are very strong, * * * but if this act is to be overthrown it should not be overthrown by us." Pullman Co. *v.* Knott, 235 U. S., 23 (1914).

car companies and tank-car companies pay to the State for state purposes an annual license tax of $500.[a]

In assessing sleeping cars and parlor cars the State Board determines a standard valuation per car for each of two classes into which it divides them. These valuations are applied to cars operated exclusively in Florida during the year, but for cars used in interstate transportation through or into Florida the valuation for each car is based on that proportion of the ascertained standard value which its route mileage in Florida bears to its entire route mileage wherever traveled. The total of the valuations thus found is assessed to the company and apportioned on the route mileage basis to the counties and minor taxing districts through which the routes pass.[b]

Express Companies.

Express companies, domestic and foreign, are subject to the general property tax, assessed and paid locally for state and local purposes.[c] They also pay to the State for state and local purposes an annual license tax of 2 per cent on gross receipts derived from business done between points in the State. Of this tax, one-half is "distributed by the comptroller among the various counties of this State in proportion to the assessed valuation thereof." The other half is turned into the state treasury "as license money." Cities or towns in which express companies have offices may impose upon such companies an annual license tax of from $6 to $200, according to population.[d]

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[a] Laws 1913, act No. 1, sec. 46.

[b] Laws 1907, act No. 1, sec. 46. Interview with state tax officials, October, 1914.

[c] Interview with state tax officials, October, 1914.

[d] Laws 1913, act No. 1, sec. 22.

In a case involving the validity of a license tax, graduated according to population, imposed by cities upon express companies, the court held that the act did not tax or regulate or apply to interstate commerce, as distinguished from state or local commerce carried on by an express company, but applied only to express business that was local or state commerce. Osborne *v.* Florida, 33 Fla., 162 (1894). Affirmed, 164 U. S., 650 (1897).

A special charter act of the legislature (Laws 1907, chap. 5823) governing the municipality of the city of Miami, authorized the city to license privileges at amounts not dependent upon general state revenue law. Under this special act the city fixed the license tax upon express companies at $100. A general act (Laws 1907, chap. 5597), becoming effective subsequent to the special charter act, fixed the city license tax upon express companies at not to exceed $50 in cities of 5,000 to 10,000 inhabitants (into which class the city of Miami would fall), but the general act provided that the powers which had been granted or might be granted to any municipal

Telegraph Companies.

Telegraph companies, domestic and foreign, pay the general property tax locally for state and local purposes.[a] In addition, they pay to the State an annual license tax, one-half for state purposes and one-half for local purposes. The rate of the license tax is 65 cents per mile of actual route distance between points, the number of wires not being taken into consideration. Distribution of the tax to the counties entitled thereto is made upon the pole mileage basis.[b]

Assessment of telegraph property for general property taxation is made by the State Board (the comptroller, attorney general, and treasurer) at separate uniform valuations per mile for poles and first wire, for second wire, for third and for additional wires, and for cables.[c] Apportionment of valuations to the counties and localities is made by the comptroller according to the mileage of the respective classes of wire or cable therein.[a]

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corporation by special act or charter act for the purpose of requiring the payment of license taxes should not be regarded as limited by the general act.

Held: That the ordinance imposing the $100 tax was not void. There was, by the general act, no express repeal of the provisions of the special act, and no intent to repeal such provisions by implication. The authority given the city of Miami in the special act did not offend the organic law, and the ordinance imposing the $100 license tax upon express companies was not shown to be violative of the Constitution or laws of the United States, which was one of the express limitations of the charter act and would be implied if not expressed. It was not made to appear that the ordinance imposing the $100 license tax was violative of the constitutional guaranties of property rights, or that it was unreasonable or unjustly discriminatory. No question of interstate commerce was involved, since the license tax was imposed with reference to intrastate business and the fact that the company was also engaged in interstate commerce did not relieve it of the tax if it desired to do intrastate business. Hardee *v.* Brown, 56 Fla., 377, 386 (1908).

[a] Laws 1907, act No. 1, sec. 46. Interview with state tax officials, October, 1914.

[b] Laws 1913, act No. 1, sec. 54.

In a case involving a municipal license tax of $100 upon telegraph companies defendant contended that the ordinance imposing the tax was invalid as encroaching upon the authority of Congress to regulate interstate commerce and placed a burden upon such commerce. Held: The tax relates solely to intrastate business done in the city, and does not apply to, and can not be lawfully enforced so as to apply to or regulate or impose a burden upon foreign or interstate messages or messages sent by or for the United States Government. Thus construed the ordinance does not conflict with Federal law. Ferguson *v.* McDonald, 66 Fla., 494 (1913).

[c] For the year 1912 the assessment of pole and first wire was fixed at $50, for second wire at $20, and for the third and other wires at $15 per mile. Report of Comptroller of State of Florida, 1912, pp. 165–167.

Telephone Companies.

Telephone companies, domestic and foreign, pay the general property tax locally for state and local purposes.[a] In addition, telephone systems operating 100 instruments or more for profit, pay to the State for state purposes an annual license tax of from 6 cents to 10 cents per instrument, according to total number of instruments installed.[b] Similar license taxes are paid to the counties for county purposes, and to incorporated cities and towns for municipal purposes. The rate, however, in either case equals but one-half the State rate.[c]

Assessment of telephone property for general property taxation is made by the county assessor, who apportions its value to the minor taxing districts.[d]

Steamboat Companies.

Steamboat companies pay the general property tax locally for state and local purposes. Boats are assessed and taxed in the county in which "they may belong or be enrolled, registered, or licensed."[e] Such companies also pay locally for state purposes an annual license tax on each boat used in the waters of the State for transporting passengers or freight.[f] The rate of this tax is graduated according to tonnage capacity and ranges from $10 to $50. A tax of the same nature is paid to the counties for county purposes, and to incorporated cities and towns for municipal purposes. The rate, however, in either case may not exceed half the state rate.[c] Each agent, for steamships or steamboats, pays $25, but if representing an owner operating coastwise vessels only, pays $10 per annum.[g]

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[a] Laws 1907, act No. 1, sec. 1.

[b] Laws 1913, act No. 1, sec. 54.

[c] Ibid., sec. 2. Letter of State Tax Commissioner, November 10, 1914.

[d] Interview with state tax officials, October, 1914.

[e] Laws 1907, act No. 1, secs. 1, 10.

The domicile of a vessel duly registered under acts of Congress regulating the registry of vessels is the port where the vessel is registered, and where vessels registered in another State are employed in commerce in the waters of this State in pursuance of the usual custom of sending such vessels wherever the most profitable service can be secured, they are not so permanently in this State as to become incorporated into the personal property here and subject to taxation in this jurisdiction. Only the State in which the home port is situated has dominion over the vessels, under such circumstances, for the purpose of taxation. Johnson *v.* DeBary-Baya Merchants' Line, 37 Fla., 499 (1896).

[f] Laws 1913, act No. 1, sec. 52.

[g] Ibid., sec. 6, p. 6.

Public-Utility Companies.

Suburban, interurban, and street railway, ferry, gas, electric light and power, and water companies pay locally the general property tax for state and local purposes.[a] In addition, they pay to the State for state purposes annual license taxes as follows: $5 for each mile of suburban or interurban railway; [b] from $7.50 to $15 for each mile of street railway; [b] from $10 to $100 for ferries, according to the population of the county served;[c] from $25 to $300 for each gas plant,[d] and from $10 to $300 for each electric light, power,[e] or water plant[f] according, in each case, to the population of the city or town wherein they are operated. Similar license taxes not to exceed 50 per cent of those imposed by the State are levied by counties.[g] Incorporated cities and towns are granted like authority.[h]

Assessment of street railway property for general property taxation is made by the State Board in practically the same manner as the assessment of railroad property.[i] The assessment of other public-utility property is made by local officials.

Manufacturing, Mercantile, Mining, and Miscellaneous Corporations.

Manufacturing, mercantile, mining, and miscellaneous corporations pay the general property tax assessed and collected locally for state and local purposes.[a] In addition, companies of these four classes pay for conducting certain kinds of business annual license taxes to the State for state purposes.[j]

Unless specifically prohibited, counties, and cities or towns, may each impose a license tax not exceeding 50 per cent of the license tax for state purposes.[k]

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[a] Laws 1907, act No. 1, sec. 1.
[b] Laws 1913, act No. 1, sec. 43.
[c] Ibid., sec. 23.
[d] Ibid., sec. 26.
[e] Ibid., sec. 21.
[f] Ibid., sec. 56.
[g] Ibid., sec. 2. Letter of State Tax Commissioner, November 10, 1914.
[h] Laws 1913, act No. 1, sec. 2. Cities and towns impose this license tax upon gas, electric light and power and water companies. Letter of State Tax Commissioner, November 10, 1914.
[i] Laws 1907, act No. 1, sec. 46.
[j] Ibid., act No. 2, pp. 36 et seq.; Laws 1913, act No. 1.
[k] Laws 1907, act No. 2, sec. 2; Laws 1913, act No. 1, sec. 2.

Stockholders and Bondholders.

Bonds of both domestic and foreign corporations are taxable in the hands of the holders.[a] Holders "of stock in any incorporated company doing business under a corporate name" are not taxed "if such stock is returned for taxation" by the corporation and the taxes paid thereon by the corporation, or if the property of the company is assessed where located and "taxes are then paid on such property."[b]

Foreign Corporations.

Foreign corporations of the various classes herein treated are taxed like domestic corporations of the corresponding class.[c]

III. FINANCIAL RESULTS.

Classification of Revenue.

The proportion of total state taxes for state purposes derived from corporations for 1912 was approximately 22 per cent.

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED DECEMBER 31, 1912.[d]

Total state receipts, all sources		$3,015,793.04
State taxes from corporations:		
Railroads, steam, and electric—		
General property [e]	$234,491.78	
Mileage	26,393.50	
Sleeping car, general property [e]	2,039.66	
Express companies, gross receipts	3,750.00	
Telegraph—		
General property [e]	3,752.49	
Mileage	1,406.58	
Insurance companies	186,758.01	
Banks, fees	4,970.00	
Corporation charter tax	64,529.00	
Total ascertainable state taxes from corporations		528,091.02
Other taxes:		
General license tax	334,329.70	
Sale of fertilizer and feed stamps	82,820.55	
Automobile registration tax	4,268.00	
Tax on commissions	2,295.00	

[a] Laws, 1907, act No. 1, sec. 1.

[b] Ibid., sec. 8.

[c] Constitution, Art. XVI, sec. 16; Laws 1907, act No. 1, sec. 1, and Laws 1913, act No. 1.

[d] Report of Comptroller, 1912.

[e] Estimated by applying the state rate of 75 cents per $100 to the assessed values of the property as shown in report of state comptroller, 1912.

Other taxes—Continued.		
Tax certificates	$32,131.06	
Drainage tax fund	245,738.75	
Back taxes	4,841.35	
General property tax [a] (less $240,283.93 above estimated)	1,149,520.12	
Total state taxes not from corporations		$1,855,944.53
Total taxes for state purposes, all sources		2,384,035.55
Receipts from sources other than taxes:		
Hire of state convicts	$307,132.48	
Interest on deposits, funds, etc	116,070.62	
Agricultural experiment station funds	32,673.81	
United States aid to colleges	50,039.11	
Peabody building fund	40,000.00	
Miscellaneous college fund	21,564.55	
State school fund	42,333.82	
Forest funds	3,836.34	
Sale of books, statutes, etc	3,866.25	
Fees, fines, etc	734.86	
Miscellaneous receipts	13,505.65	
Total receipts from sources other than taxes		631,757.49
Total state receipts, all sources		3,015,793.04

IV. COMMENTS.

Historical.

Very little interest attaches to the early history of the taxation of corporations as distinguished from that of individuals in Florida. In 1839, however, the territorial legislature provided, in an act to incorporate the Southern Life Insurance and Trust Co., that the capital stock of that corporation should be taxed at the same rates as all other personal property of the territory, but that no tax should be levied against the corporation beyond an amount of $5,000 in any one year.[b]

In 1847 the rate of taxation on "shares of stock in incorporate companies," was "twenty cents on every hundred dollars' value thereof." [c] A later provision exempted the owner or holder of stock in any incorporated company or corporation which was taxed on its capital.[d]

Railroads, as early as 1869, made returns of their right of way, tracks, and rolling stock, by counties, to the state comptroller,

[a] Part of this comes from local taxation of corporations, but it is practically impossible to ascertain the amount thus received, except the amounts above estimated, which are not included in this item.

[b] Compilation of public acts of Florida, Duval, 1839, p. 473, sec. 20.

[c] Digest of Florida laws, 1847, Thompson, p. 89.

[d] Act of 1869, see Bush's Digest, Laws of Florida, 1872, p. 642.

who apportioned the value among the counties pro rata to each mile of main track, adding to the apportionment for each county the value of real estate, other than right of way, and the value of fixtures, machinery, tools, etc., within the county. Upon the value thus obtained taxes were assessed by the counties the same as upon the property of individuals.[a] Telegraph companies paid a semiannual tax of $8 per mile for all submarine telegraph laid and operated within the waters of the State, and $1 per mile for all lines of land telegraph operated in the State.[b]

In 1874 an exemption from taxation for five years from date of establishment was allowed to manufacturers of cotton goods, sugar, cottonseed oil, paper, and salt.[c]

Steamboats engaged exclusively in intrastate transportation were, in 1881, made subject to a license tax of $100 each. This tax was made payable to the tax collector of the county where the principal office was located, unless the general property tax had been paid in some county of the State.[d]

Telegraph companies became assessable in 1887 in the same manner as had been provided for railroads.[e]

The law with respect to the apportionment of valuation of railroad property to the various counties was changed in 1897 so that such apportionment was made pro rata to each mile of main track, branch, switch, spur track, and sidetrack, instead of pro rata to each mile of main track as formerly.[f] During the same year sleeping and parlor car companies were required to pay $1.50 upon each $100 of gross receipts derived from business done between points in the State.[f]

In 1903 each express company doing business in the State was required to pay to the State a fixed sum of $3,750 per annum. This was in lieu of all other state and county license taxes. One-third of the amount was for state purposes and two-thirds was distributed among the various counties of the State "in proportion to the assessed valuation thereof." Cities and towns were authorized

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[a] Bush's Digest, Laws of Florida, 1872, p. 651.

[b] Ibid., p. 659.

[c] Act of Feb. 16, 1874, chap. 2035, see Digest, Laws of Florida, 1881, p. 868, sec. 16.

[d] Act of Mar. 5, 1881, chap. 3219, sec. 12, see Digest, Laws of Florida, 1881, p. 873.

[e] Act of June 13, 1887, chap. 3681, sec. 44, see Revised Statutes of Florida, 1892, p. 217.

[f] Acts of 1897, chap. 4515, sec. 8.

to impose upon each company having offices therein an annual license tax varying from $12.50 to $200, according to the population.[a] Telegraph companies were required during the same year to pay $500 each per annum for state purposes. No further license tax could be collected from telegraph companies by any county or municipality.[b] An annual license tax of $1 per registered ton, but not less than $10 nor more than $100 each, was also placed upon steamboats which had not paid the regular tonnage assessment in any county of the State, but which were engaged in the business of transporting passengers and freight in the waters of the State. This tax was payable to the tax collector of the county where the principal office was located, or to the collector at the terminus of the route in the State, if the principal office was located outside of the State.[c]

License Taxation.

The system of taxing privileges was extended in 1907 so that license taxes were applied to practically all transportation and transmission companies, to merchants, and to some lines of manufacturing. The fixed annual sum paid by express companies was at that time increased to $7,500, but later changed to a license tax based on gross receipts. Other changes in the base and the amount of the license taxes have been made, but the system as extended in 1907 is practically the same as now in force.[d]

Separation of Sources Recommended.

The governor, in a message to the legislature in 1911,[e] by using figures from reports of state officers and from other sources, and by means of estimates, concluded that, while all the property in the State was assessed at less than 178 million dollars, the full cash value of such property was much nearer one billion dollars. He referred to the tendency in other States toward the abandonment of the attempt to tax all property at a uniform rate and by the same method, and he deemed it necessary that wise legislation be enacted in Florida with reference to the assessment of property, and especially of personal property.

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[a] Laws 1903, chap. 5106, secs. 47, 48, 49.
[b] Ibid., sec. 53.
[c] Ibid., sec. 51.
[d] Laws 1907, chap. 5597, pp. 38, 48, 53, 54, 56; chap. 5623, p. 107.
[e] Governor's Message, 1911, pp. 37–39.

The 1911 legislature provided for the appointment of a special tax commission of three members, to report to the governor such changes in the tax provisions of the constitution and laws of the State as might be deemed advisable, and to submit drafts of proposed constitutional amendments and bills. In December, 1912, this commission made a report in which it submitted a draft of a joint resolution "proposing an amendment to the state constitution on the subject of legislative power of taxation" by adding a new section to Article IX, so as to provide that the power of taxation shall never be surrendered, suspended, or contracted away; that all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only; all provisions of the constitution in conflict with these new provisions to be repealed.[a] The purpose in suggesting this constitutional amendment was to render possible the separation of sources of state and local revenue. The commission's report also contained drafts of proposed legislation to provide that the State, for the full amount of its revenue, should receive the taxes assessed by it upon railroads, telegraphs, and telephones, together with miscellaneous taxes and licenses, while the counties might levy their own taxes for county purposes on property of a local character other than that mentioned.[b]

Publicity.

The special tax commission above mentioned also recommended that the legislature prescribe that the assessment roll be published in each county, in one issue of a newspaper of general circulation, so that the people and the county boards of equalization might ascertain whether the property of the county had been assessed at correct relative values and what property, particularly personal property, had been omitted. The commission thought the publication of the rolls would result in greater uniformity of valuation and in the assessment of much property ordinarily overlooked.[c]

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[a] Report of Tax Commission, 1911–12, p. 40. This resolution was introduced in the lower house at the 1913 session, but, although favorably reported by a unanimous vote of the committee, was indefinitely postponed. Journal of the House of Rep., Florida, 1913 session, pp. 213, 347, 508, 1930.

[b] Report of Tax Commission, 1911–12, p. 4, p. 42 et seq.

[c] Ibid., pp. 8, 9.

Bibliography.

The following is a list of the more important publications, in addition to the constitution, the statutes, and the court reports, of value in the study of corporate taxation in Florida:

Report of Tax Commission, 1911–12.
First Biennial Report of Tax Commission, period ending December 31, 1914.
Governor's Message, 1911.
Journal of House of Representatives, session of 1913.
Annual Reports of Comptroller of State of Florida.

KENTUCKY.

I. GENERAL VIEW.

Chief Features.

First. The taxation of all property under the general property tax for both state and local purposes.

Second. The assessment of "franchises" of public service and public utility corporations as a special item by an especially constituted board.

Third. The assessment of all tangible property of steam and interurban railroad companies, and of interstate railroad bridge companies, by the Railroad Commission.

Fourth. The application to mercantile and manufacturing corporations of taxes supplemental to the general property tax, based on capital stock or levied at specific amounts.

General Property Tax.

Domestic and foreign transportation, transmission, mercantile, and manufacturing companies pay the general property tax for state and local purposes on all property.

Franchises, or intangible values, of all public service and public utility companies, are assessed by the State Board of Valuation and Assessment. The physical property of steam and interurban railroads, and interstate railroad bridge companies, is assessed by the Railroad Commission. All other property is assessed locally.

Taxes Supplemental to the General Property Tax.

In addition to the general property tax, mercantile and manufacturing companies pay to the State for state purposes either an annual license tax on the amount of capital employed in the State, or taxes of specific amounts, according to the particular line of business in which they are engaged.

Stockholders and Bondholders.

Resident holders of stock are not taxed when the corporation pays taxes on its property in the State. Otherwise, resident

holders of stock are taxable on their holdings. Bonds of domestic and foreign corporations are taxable to holders.

Foreign Corporations.

Foreign corporations of the classes herein treated are, with certain exceptions hereinafter noted, taxed in practically the same manner as similar domestic corporations.

Administration.

The State Board of Valuation and Assessment, composed of the auditor of public accounts, state treasurer, and secretary of state, assesses the franchise, or intangible property, of all public service corporations, and of certain financial companies.[a] It also assesses the tax on authorized capital stock of nonfranchise corporations.[b] City assessors in cities of the first class assess the franchises of public service corporations for city purposes, and county boards of supervisors assess the franchises of turnpike companies.[c]

The railroad commission, composed of three elective officers with terms of four years each, assesses the tangible property of steam and interurban railroad companies and companies owning bridges spanning boundary rivers of the State.[d] All other taxable property, including the tangible property of public service corporations other than railways, is assessed by county assessors.

The auditor of public accounts certifies for local taxation, under the general property tax, apportioned values assessed by the State Board of Valuation and Assessment or by the Railroad Commission.

The State Board of Equalization, composed of eight members, seven appointed by the governor for terms of four years each, one from each appellate district of the State, and the auditor of public accounts, equalizes the local assessments of property as between the various counties.[e] This board may raise or lower each county's total of local assessments, and may raise or lower the assessments within the county, of lands and personalty as one class and town lots as another.[f] Local assessments of stocks, bonds, and credits are not changed.

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[a] Stats., sec. 4077.
[b] Ibid., sec. 4189d.
[c] Ibid., sec. 4095.
[d] Ibid., secs. 821, 823, 4098, 4102.
[e] Ibid., secs. 4268, 4274, 4275.
[f] Interview with state tax officials, October, 1914.

County boards of supervisors have authority to revise assessments made by county assessors.[a] Revenue agents, appointed by the auditor of public accounts, report violations of the laws governing license taxes and institute suits in various courts to assess omitted property.[b]

All state taxes on steam and electric railroads, on railroad bridges spanning border rivers of the State, the franchise taxes for state purposes on other public-service corporations, and the corporation tax on authorized capital stock are paid to the state treasurer. All other taxes and licenses, except those payable in cities of the first class, are paid to the county sheriffs. State license taxes are paid to the county clerks.[c]

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION.[d]

Taxes shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax. Taxes shall be levied and collected by general laws, and for public purposes only.[e]

All property, not exempted by this constitution, whether owned by natural persons or corporations, shall be taxed in proportion to its value, and assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale.[f]

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[a] Stats., sec. 4120.

[b] Ibid., secs. 4258, 4260.

[c] Sources of revenue in Kentucky:

Towns.—(*a*) General property tax; (*b*) poll tax; (*c*) tax on gross receipts of public service corporations, in certain cities; (*d*) business taxes and licenses.

Counties.—(*a*) General property tax; (*b*) poll tax.

State.—(*a*) General property tax; (*b*) corporation license tax; (*c*) business taxes, licenses, and organization fees; (*d*) inheritance tax; (*e*) dog tax.

[d] Except as otherwise indicated, references are to the constitution of 1891 as contained in "Kentucky Statutes, 1909," by John D. Carroll.

[e] Constitution, sec. 171.

An amendment to this section so as to permit classification of property and separation of sources of state and local revenues has been proposed by the 1914 legislature. The 1912 legislature proposed a similar amendment, and the voters of the State approved the amendment at the November, 1913, election, but because of failure to give the required publication of pendency of the amendment, the action of the voters was invalid. McCreary, Gov. *v.* Speer, 156 Ky., 783 (1914).

The uniformity provision of sec. 171 does not directly and specifically apply to license fees authorized by sec. 181. * * * The ad valorem tax referred to in secs. 171, 172, and 174, if for state purposes, must be the same in all parts of the State and within the particular locality if for local purposes. Hager *v.* Walker, 128 Ky., 1 (1908).

[f] Constitution, secs. 172, 174.

Nothing in this constitution shall prevent the general assembly from providing how railroads and railroad property shall be assessed and how taxes thereon shall be collected.[a]

No property shall be exempt from taxation except as provided in this constitution.[b] There shall be exempt from taxation public property used for public purposes,[c] certain property used for religious worship, parsonages, cemeteries and educational institutions not for profit, public charitable institutions, public libraries, personal property not exceeding $250 in value for each family, crops grown and in the hands of the producer for the year in which the assessment is made. Laws exempting or commuting property from taxation other than the property above mentioned shall be void. The general assembly may authorize any incorporated city or town, as an inducement to their location to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years.[d]

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[a] Constitution, sec. 182.

The right of classification is open to the general assembly as to method of taxation and assessment of railroad properties different from that applied to other species of property. Commonwealth *v.* Southern Pacific Co., 150 Ky., 97, 102 (1912).

[b] Constitution, sec. 3.

District of Columbia bonds, declared by Congress to be exempt from Federal, state, or municipal taxation, are not taxable in Kentucky. Commonwealth *v.* Hearne's Ex. & Trustee, 100 S. W. Rep., 820 (1907).

Warehouse receipts for whisky exported to Germany from Kentucky were held exempt from the taxing power of the State, though the holder was a resident of Kentucky. Sellinger *v.* Kentucky, 213 U. S., 200 (1909).

[c] Public property exempt:

Fire department property and parks of municipality. City of Owensboro *v.* Commonwealth, 105 Ky., 344 (1899).

Municipal lighting plants. City of Frankfort *v.* Commonwealth, 94 S. W. Rep., 648 (1906); Commonwealth *v.* Paducah, 126 Ky., 77 (1907).

A bridge connecting two municipalities, which owned all the stock, was held exempt, though tolls were charged. Commonwealth *v.* Newport & Cov. Bridge Co., 105 S. W. Rep., 378 (1907).

Municipal waterworks—formerly held subject to state and county taxation. Covington *v.* Kentucky, 173 U. S., 231 (1899); held exempt, Commonwealth *v.* City of Covington, 128 Ky., 36 (1908). Investments for such a fund exempt; Commonwealth *v.* Lebanon Water Works, 130 Ky., 61 (1908). Plant exempt; Ryan *v.* City of Louisville, 133 Ky., 714 (1909).

Louisville wharf property (city property)—formerly held subject to state taxation, Commonwealth *v.* City of Louisville, 47 S. W. Rep., 865 (1898); held exempt, Commonwealth *v.* City of Louisville, 133 Ky., 845 (1909).

[d] Constitution, sec. 170. The legislature has authorized cities of the first, second, third, and fourth classes to grant such exemptions; Stats., secs. 2980, 3074, 3278, 3490.

Old business of a manufacturing establishment purchased by a new corporation not exempt. Victor Cotton Oil Co. *v.* Louisville, 149 Ky., 149 (1912); B. F. McCormick Lumber Co. *v.* City of Winchester, 155 Ky., 494 (1913).

Land, buildings, and machinery of plant generating electricity, held exempt as manufacturing; distributing paraphernalia not exempt. Kentucky Electric Co. *v.* Buechel, 146 Ky., 660 (1912).

Nothing in the constitution shall be construed to prevent the general assembly from providing for taxation based on income, licenses, or franchises.[a]

The general assembly shall provide by law an annual tax, which with other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year.[b]

The tax rate of cities, towns, counties, and taxing districts, for other than school purposes, shall not, at any time, exceed $1.50 on the $100 for cities or towns, and $0.50 (on each $100) for counties and taxing districts, unless for the payment of certain indebtedness contracted for before the adoption of the constitution now in force.[c]

The general assembly may, by general laws only, provide for the payment of license fees on franchises, trades, occupations, and professions, or a special or excise tax; and may, by general laws, delegate to counties, cities, and towns the power to impose and collect such license fees.[d] The general assembly, by general law only, may authorize cities or towns to tax for municipal purposes tangible and intangible personal property, on an income, license, or franchise basis, in lieu of an ad valorem tax thereon; provided, cities of the first class (Louisville) shall not be authorized to omit

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[a] Constitution, sec. 174.

The following acts of the legislature have been held unconstitutional and void, as a regulation of interstate commerce:

Requiring the agent of every express company not incorporated under Kentucky laws to pay a license fee to the State. Crutcher *v.* Kentucky, 141 U. S., 47 (1891).

Providing that express companies doing business in the State shall pay a license tax to the State of $500 or $1,000 per annum according as the lines over which they operate are less or more than 100 miles in length, in addition to a local ad valorem tax on their tangible property, and, providing that telegraph companies operating any line in the State shall pay a yearly tax to the State of $1 per mile for the line of poles and first wire, and 50 cents for each additional wire; held, that these two latter acts sought to lay a burden upon the business of such companies rather than upon their property. Commonwealth *v.* Smith, Commonwealth *v.* U. S. Express Co., 92 Ky., 38 (1891).

The ad valorem system relates to the assessment and taxation of all property; the income tax, to the product or income from property or from business pursuits. The license tax is one imposed on the privilege of exercising certain callings, professions, or avocations, that, when collected, goes into the state treasury, and, when applied to municipal taxation, is termed a "license fee." Levi *v.* Louisville, 97 Ky., 394 (1895).

[b] Constitution, sec. 171.

[c] Ibid., sec. 157.

[d] The legislature has granted this authority to cities of the various classes. Stats., secs. 2980, 3174, 3290, 3490, 3637, and 3704.

A city license fee must be reasonable in amount. Sperry & Hutchinson Co. *v.* City of Owensboro et al., 151 Ky., 389 (1912).

the imposition of an ad valorem tax on such property of any public service or public utility company.[a]

The general assembly shall not impose taxes for the purpose of any county, or municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess [b] and collect taxes.

The general assembly shall not pass local or special acts to authorize or regulate the levy, assessment, or collection of taxes.[c]

The power to tax property shall not be surrendered or suspended by any contract or grant to which the Commonwealth shall be a party.[d]

The general assembly shall have no power to release, extinguish, or authorize the releasing or extinguishing, in whole or in part, the indebtedness or liability of any corporation or individual to this Commonwealth, or to any county or municipality thereof.[e]

No foreign corporation shall be allowed to transact business within the State on more favorable conditions than are prescribed by law to similar domestic corporations.[f]

STATUTES.[g]

General Property Tax.

All property, unless exempt, is taxed under the general property tax for both state and local purposes.[h]

The intangible property of public service corporations is assessed as "franchise." [i] Intangible personal property of other corpora-

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[a] Constitution, sec. 181, as amended, chap. 50, acts of 1902, and ratified 1903.

The legislature has enacted this proviso substantially, and also provided that the city may levy ad valorem taxes on railroad property based on the assessments by the state boards (Stats., sec. 2980); that the city assessor is to assess for city purposes the franchise of gas, water, ferry, bridge, street railway, express, electric light, electric power, telegraph, press dispatch, telephone, turnpike, car, and other like companies exercising any special or exclusive privilege or franchise, or performing any public service (Stats., sec. 2984a).

Under secs. 181 and 171, the legislature is not required, either by general laws for state purposes or for municipal purposes to impose license fees on all trades, occupations or professions; but any one or more trades, occupations or professions may be taxed, and others exempted. Hager *v.* Walker, 128 Ky., 1 (1908).

[b] In the place used, assess means to levy a tax, and does not mean the valuation of property for taxation. South Cov. & Cin. St. R. Co. *v.* Bellevue, 105 Ky., 283, (1899).

[c] Constitution, sec. 59, subsec. 15.

[d] Ibid., sec. 175.

[e] Ibid., sec. 52.

[f] Ibid., sec. 202.

[g] The "Stats." herein referred to are "Kentucky Statutes, 1909," by John D. Carroll.

[h] Stats., sec. 4020.

[i] Ibid., sec. 4077. Commonwealth *v.* Cumberland Telephone & Telegraph Co., 124 Ky., 535 (1907).

tions is assessed similarly as such property of individuals, and is taxed at the principal place of business in the State,[a] and tangible personal property of such other corporations is taxable where it has established a taxable situs based on the actual situation of the property.[b] Interests, rights, or privileges in minerals, standing timber, oil,[c] and gas are taxed to the owner where the land is located.[d]

Taxable personal property includes bonds, notes,[e] accounts, cash on hand and on deposit,[f] credits (without deduction for indebtedness), stock in corporations under certain circumstances,[g] mineral

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[a] Stats., sec. 4085.

The intangible property is assessable at the principal place of business of a corporation, and there only. City of Covington *v.* Standard Oil Co., 137 Ky., 837 (1910).

The entire personal property of a domestic grocery company, having retail grocery stores in various places of the State, was held assessable for taxation under a former law, only at its residence and principal place of business in the State. Langdon-Creasy Co. *v.* School Dist., 116 Ky., 562 (1903).

Where a nonresident establishes a business in this State and manages it by resident agents, money in bank and debts due, accumulated from the business, are taxable. Commonwealth *v.* R. G. Dun & Co., 126 Ky., 108 (1907).

Notes, bonds, and other securities owned by nonresidents, but in the hands of a resident fiduciary for the purposes of controlling and investing, are taxable at the place of the latter's residence. Higgins *v.* Commonwealth, 126 Ky., 211 (1907).

Money collected from local insurance business and deposited in a local bank, but promptly transmitted to the home office of an insurance company in another State, is not taxable in Kentucky. Commonwealth *v.* Prudential Life Insurance Co., 149 Ky., 380 (1912).

[b] Stats., sec. 4025.

[c] The interest of a nonresident holder of an oil lease, which appeared to be on a percentage of the production, is taxable under sec. 4039. Mt. Sterling Oil & Gas Co. *v.* Ratliff, 127 Ky., 1 (1907); see also Wolfe County *v.* Becket, 127 Ky., 252 (1907).

[d] Stats., sec. 4039.

In a grant of a right of way to a railroad company, no taxable interest remains in the grantor. Ford *v.* Commonwealth, 156 Ky., 428 (1913).

[e] Resident vendor liable to assessment for the value of purchase money notes. Gish *v.* Shaver, 140 Ky., 647 (1910).

[f] "The banks are not required to pay taxes on the money deposited with them by their customers, or on assets which represent it." They are quasi trustees of their depositors, and under the law the depositors are required to pay the taxes on the money so deposited. Deposit Bank of Owensboro *v.* Daviess Co., 102 Ky., 174, (1897); affirmed, 173 U. S., 663 (1899).

[g] A resident executor of a nonresident decedent qualifying in the State of the decedent can not be required to list stock of the estate in a corporation located in the State of the decedent. Commonwealth *v.* Peebles, 134 Ky., 121 (1909).

"The general rule has long been settled as to vessels plying between the ports of different States engaged in the coastwise trade, that the domicile of the owner is the situs of a vessel for the purpose of taxation, wholly irrespective of the place of enrollment, subject, however, to the exception that where a vessel engaged in interstate commerce has acquired an actual situs in a State other than the place of domicile of the owner, it may there be taxed because within the jurisdiction of the taxing authority. * * * As in the case at bar, the owner of the vessels was domiciled in Illinois and the vessels were not employed exclusively in commerce between points

products, patent rights,[a] and the stock on hand of merchants and manufacturers.[b]

The statute requires the assessment of property at its fair cash value, estimated at the price it would bring at a fair voluntary sale.[c] In practice, however, property is assessed by the local assessors at from 45 to 75 per cent of full value.[d]

Exemptions from taxation include certain public, religious, charitable, and educational property, cemeteries, personal property of individuals not exceeding $250 in value, and crops in possession of the producer if grown in the year in which the assessment is made.[e]

Railroads.

Steam and interurban electric railroad companies and companies owning railroad bridges spanning border rivers of the State pay to the State for state purposes and locally for local purposes the general property tax on all property, including franchise value.[f]

The state railroad commission values all tangible property within the State under the classification of (*a*) main line, branches, or

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in the State of Kentucky, but were engaged in traffic between that State and the ports of other States, including Illinois, it seems obvious that, as a question of fact they had no permanent situs in the State of Kentucky." Ayer & Lord Tie Co. *v.* Kentucky, 202 U. S., 409 (1906).

The ships of the Southern Pacific Co., a Kentucky corporation, enrolled or licensed from the port of New York and plying between that port and gulf ports, are taxable at the domicile of their owner in Kentucky. The corporation's principal office is maintained at Beachmont, Ky. "The ships, in fact, have never been in Kentucky, and under ordinary circumstances can not come to Beachmont. Yet it is the domicile of their owner. * * * Their owner is a citizen of Kentucky. It derives not only its existence, but all its powers, from the laws of Kentucky." Commonwealth *v.* Southern Pacific Co., 134 Ky., 417 (1909). Affirmed, Southern Pacific Co. *v.* Kentucky, 222 U. S., 63 (1911).

[a] The exclusive right to make, use, and vend an invention or discovery, granted by letters patent of the United States, can not be taxed by a State. In re Sheffield et al., 64 Fed. Rep., 833 (1894).

A trade-mark used in the sale of a commodity is not property as that term is used in the constitution and this section of the Statutes. Commonwealth *v.* Ky. Distilleries & Warehouse Co., 132 Ky., 521 (1909).

[b] Stats., sec. 4058.

[c] Ibid., sec. 4020.

[d] Interview with state tax officials, October, 1914.

The railroad commission in assessing the tangible property of railroad companies practice the custom of local assessors in the general undervaluation of property. See Report of Railroad Commission, 1913, p. 436.

[e] Stats., sec. 4026.

[f] "Then it is manifest that what the constitution intended to be taxed was property—all property. And, as to corporations, not only all tangible property, but that it intended to leave the legislature of the State free to tax the franchises of corporations if it so desired." Henderson Bridge Co. *v.* Commonwealth, 99 Ky., 623 (1895).

divisions, and (*b*) other property.[a] The value of each main line with its right of way, rails, ties, bridges, and other right-of-way superstructure within the State and its proportion of the value of rolling stock is separately assessed and reduced to a valuation per mile, which, multiplied by the number of miles of main line located within each county, city, or town, gives the value of main line therein. Each branch line or division is also separately assessed and its value including that of rolling stock is reduced to a mileage basis and treated in the same manner as main line. The value of "other property," or property not considered to be right of way or right-of-way superstructure, or rolling stock, is not apportioned on the mileage basis, but is assigned directly to the county, city, or town wherein located.[b]

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[a] Stats., secs. 4096–98, 842A3.

"The right to classify railroad property, as a separate class, for the purposes of taxation, grows out of the inherent nature of the property, and the discretion vested in the constitution of the State in its legislature, and necessarily involves the right, on its part, to devise and carry into effect a distinct scheme, with different tribunals, in the proceedings to value it. If such a scheme is due process of law, the details in which it differs from the mode of valuing other descriptions and classes of property can not be considered as a denial of the equal protection of the laws." Kentucky Railroad Tax Cases, 115 U. S., 321 (1885).

The bridge formerly owned by the Newport and Cincinnati Bridge Co., now owned by a railroad company and used for railroad, street railway, wagon, and other purposes, is assessable by the railroad commission as railroad property. Board of Equalization *v.* L. & N. R. Co., 139 Ky., 386 (1908).

"It seems clear to us that the only duty imposed upon the commissioners is to value the tangible property." It is the duty of the board of valuation and assessment to value the franchise. Southern Ry. in Ky. *v.* Coulter, 113 Ky., 657 (1902).

[b] The following example, taken from the Annual Report of the Railroad Commission, 1913, p. 525, shows the method of apportionment of tangible railroad property, as far as that method is made public:

Louisville & Nashville R. R. Co. (main line).

State of Kentucky:	
139.9 miles at $40,000 per mile	$5,596,000
Other property	2,440,349
Total	8,036,349
County of Jefferson:	
11.5 miles at $40,000 per mile	460,000
Other property	2,359,859
Total	2,819,859
City of Louisville:	
2.99 miles at $40,000 per mile	119,600
Other property	2,116,074
Total	2,235,674

Where the yards and terminal facilities require much more property than a mere right of way, this property is assessed under the head of "other property." Letter of chairman of Kentucky Railroad Commission, November 27, 1914.

A separate and independent assessment of the "franchise" or intangible element is made by the State Board of Valuation and Assessment.[a] The franchise value is found by deducting from the entire value the value of tangible property assessed in the State. With respect to roads which pass beyond the boundaries of the State, the board determines the proportion of the entire value from which the value of the tangible property assessed in the State is deducted.[b]

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[a] A foreign railroad corporation which has complied with Stats., sec. 841, which requires foreign railroad companies controlling or operating railways in the State to become a corporation of the State by filing its charter or articles of incorporation with the secretary of state and railroad commission, is not subject to the payment of two franchises annually. The naturalized corporation is not a distinct entity from the old. The foreign corporation is naturalized in order that the State may better control and supervise it. Commonwealth *v.* C. & O. R. R. Co., 120 Ky., 678 (1905).

Where the lessee corporation has been assessed with, and paid the tax on, the franchise of the lessor, the franchise can not be reassessed against the latter. Commonwealth *v.* C. St. L. & N. O. R. Co., 105 S. W. Rep., 127 (1907).

The subsidiary companies of the C. & O. Ry. system in Kentucky have been consolidated into a Kentucky corporation, which is the property of the Virginia corporation. The court said: "Every dollar's worth of tangible property owned by it has been taxed as the tangible property of the Virginia corporation, and every dollar's worth of intangible property owned by it has been taxed to the Virginia corporation, and constitutes a part of the intangible property of the Virginia corporation. To assess the Virginia corporation upon its intangible property, and then to assess the Kentucky corporation upon its intangible property, which was necessarily included in the first assessment, would be simply to tax the same property twice." Commonwealth *v.* C. & O. Ry. Co. in Ky., 131 Ky., 661 (1909).

It is proper for the board of valuation and assessment to consider railroad lines controlled by stock ownership, though operated by their own organizations, in fixing the franchise of the controlling company. Commonwealth *v.* Louisville & Nashville R. R. Co., 149 Ky., 829 (1912).

Stats., secs. 4077–84, 4090.

No assessment of intangible values is made if the tangible property assessment covers the full value of the company's property. Interview with state tax officials, October, 1914.

[b] The method of assessing intangible values is constitutional. The court further said: "We are constrained to say that by this term 'capital stock' the legislature meant to include the entire property, real and personal, tangible and intangible, assets on hand, and its franchise as well; and that, when so embraced and construed and valued as an entirety, then to take off the tangible property already assessed, and that the net balance will show and shall be the value of the franchise to be taxed under sec. 4077. This was the construction given to these several clauses by the board of valuation and assessment, and we entertain no doubt of its correctness. * * * So that the large earning capacity of this property based on its tangible value only authorizes us to assume that it lies in its franchise, which is the right to charge tolls." Henderson Bridge Co. *v.* Commonwealth, 99 Ky., 623 (1895).

This case was carried to the United States Supreme Court where it was shown that about one-half of the value of the company's entire property as found by the Kentucky board was assigned to Kentucky. The court said: "Clearly the tax was not a tax on the interstate business carried on, over or by means of the bridge, because the bridge

The statute relating to the assessment of franchises is complex, and according to the report of the special tax commission [a] is "full of infelicities of language, which have been the foundation of no little litigation."

As the Board of Valuation and Assessment does not make known the precise method used by it in determining the value of franchises, the following description is taken from judicial interpretation as reported in the above mentioned litigation. It would seem from these decisions, which are more fully described on pages 176 et seq. of this report, that (*a*) the value of the stock and bonds, or (*b*) a capitalization of the net earnings at 6 per cent, based on the average market price or on the average earnings for periods of not less than five years, may be taken to represent the aggregate value of the system for assessment purposes. From this aggregate is deducted the value of property not directly used in the railroad business. The aggregate value taxable in Kentucky is then found by taking that proportion of the remainder which the mileage within the State bears to the total mileage wherever located, taking into consideration the difference, if any, in character and value between the mileage within and without the State. Having thus found the aggregate value taxable in Kentucky, the value of tangible property as assessed by the railroad commission is deducted and the remainder equals the value of franchise taxable in Kentucky, which is presumably equalized to agree with assessments of the general mass of property in the State.[b] It is then appor-

company did not transact such business. * * * The fact that the tax in question was to some extent affected by the amount of the tolls received * * * is too remote and incidental to make it a tax on the business transacted. * * * The only franchises treated here as a subject of taxation were those granted by the State of Kentucky. * * * The tax in controversy was nothing more than a tax on the intangible property of the company in Kentucky." The method is not in violation of the Constitution of the United States. Four of the justices dissented, on the ground that it was a tax upon gross receipts derived from interstate commerce business and so void. Henderson Bridge Co. *v.* Ky., 166 U. S., 150 (1897).

[a] Report of Special Tax Commission, 1912–14, p. 104.

[b] The statute does not confine assessing boards to the use of the mileage basis, but leaves them at liberty to adopt any other basis within statutory methods that will aid in reaching a fair valuation. Commonwealth *v.* U. S. Express Co., 149 Ky., 755 (1912).

The method of assessing the franchise of an Ohio River bridge company, as urged by the Commonwealth and approved by the court, was, first to value the whole, then to apportion a part thereof to the State on a mileage basis, and then to deduct from such part the assessed value of the tangible property in Kentucky. Commonwealth *v.* Covington & Cincinnati Bridge Co., 114 Ky., 343 (1902).

The proportion of Kentucky mileage to total mileage of the Louisville & Nashville R. R. Co., is 25 per cent. In the franchise assessment of 1912 the board of valuation and assessment allotted to Kentucky 35 per cent of the value of the company's "capital stock," which it obtained by averaging the gross receipts proportion, determined to be 39 per cent, and the net income proportion, determined to be 41 per cent, with the mileage proportion (p. 429). The board, in the opinion of the court, did not follow the

tioned on the main-track mileage basis to the counties, cities, or towns wherein the railroad operates.[a]

Domestic corporations operating wholly without the State are assessed on the value of franchise based on at least 1 per cent of the value of the capital stock.[b] This assessment is considered the taxable value in Kentucky of the intangible property including the corporate franchise, stocks, bonds, securities, and choses in action, and to it are applied the general property tax rates for state and local purposes. The situs for taxation is the principal place of business in the State.

Interurban electric railroads, and bridge companies owning bridges over boundary rivers of the State, are assessed and taxed by the same authorities and practically in the same manner as steam railroads, except that the proportion of the value of bridges spanning boundary rivers is assigned to the county and taxing districts where located.[c]

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statute. If the value of the company's stock in the State was more than the mileage proportion, the board should have apportioned a part to the State on a mileage basis and then cared for the excess value in the State by an addition to such mileage proportion (p. 438). As the capital stock was considered assessed at full value, and other property throughout the State at not more than 70 per cent, the assessment was ordered reduced by 30 per cent. Louisville & N. R. Co. *v.* Bosworth, 209 Fed. Rep., 380 (1913).

The franchise assessments of three other railroad companies were ordered reduced by 30 per cent. Illinois Central Co. *v.* Bosworth, Cincinnati N. O. & T. P. Ry. Co. *v.* same, Chesapeake & O. Ry. Co. *v.* same, 209 Fed. Rep., 465, 467, 469 (1913).

The board does not pursue any one particular method but applies the method which, in its judgment, is deemed best in any one particular case. Different methods are used for different railroads. Interview with state tax officials, October, 1914.

[a] The bridge of the Henderson Bridge Co. was sold to the Louisville & Nashville R. R. Co. When the corporation sold out and no longer had any intangible property, the court stated, the right of the city to collect a franchise tax from it was at an end; the franchise of the Henderson Bridge Co. is now owned by the Louisville & Nashville Co., and the value of this franchise goes to swell the value of the franchise of the latter railroad company. Louisville & Nashville R. R. Co. *v.* City of Henderson, 154 Ky., 575 (1913).

[b] Stats., sec. 4081.

The Southern Pacific Co. was chartered by the State of Kentucky with power to lease, own or operate any railroad. The company maintains its chief office in Kentucky, but no part of the lines of the company lie in Kentucky. The franchise of the company was assessed for $2,727,125 in 1908 and for $4,846,554 in 1909, at the rates of 1 and 1⅓ per cent, respectively, on the value of the company's entire property. The assessment was made under sec. 4081, and the method therein prescribed is constitutional. Commonwealth *v.* Southern Pacific Co., 150 Ky., 97 (1912); see also Southern Pacific Co. *v.* Commonwealth, 134 Ky., 410 (1909).

[c] A bridge company received a grant from a city to construct a railroad bridge over the Ohio River along certain streets and the right to use certain land on the water front for wharves, elevators, etc. The grant contained a provision that the city did not waive the right to tax the bridge itself, appurtenances, etc. Held, that the city had the right to tax the entire bridge to the Indiana shore, the State line. Henderson Bridge Co. *v.* City of Henderson, 90 Ky., 498 (1890).

A writ of error to the Supreme Court of the United States was dismissed, the court saying: "There is nothing in the suggestion that the taxation of the bridge is a regu-

Each company of the above-named classes is required to submit annually to the auditor of public accounts a report showing the value and location of its tangible property and details with respect to capitalization, organization, indebtedness, earnings, etc. These reports, to some extent, form the basis of assessments made by the railroad commission and by the board of valuation and assessment.

Other Public Service and Public Utility Companies.

Telegraph, telephone, express, car,[a] local street railway, electric light and power, water, gas, ferry,[b] bridge, packet,[c] guaranty, surety, and other classes of corporations exercising any special

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lation of commerce among the States, or is the taxation of any agency of the Federal Government." 141 U. S., 679 (1891). See also Henderson Bridge Co. *v.* City of Henderson, 173 U. S., 592 (1899).

The bridge of the Louisville Bridge Co. across the Ohio River is subject to municipal taxation under the present constitution, though formerly held not so subject in Louisville Bridge Co. *v.* City of Louisville, 81 Ky., 189 (1883), as property not benefited by the city government. Louisville Bridge Co. *v.* City of Louisville, 58 S. W. Rep., 598 (1900).

[a] A domestic corporation which owned cars but did not operate them, leasing them all to one customer, was held liable to the tax. Louisville Tank Line *v.* Commonwealth, 123 Ky., 81 (1906).

The railroad tank-car business of a Kentucky oil company, which was the owner of the cars, was properly assessable under these sections. In answer to the contention of the company that its charter did not authorize it to engage in the business of a carrier and that it did not exercise the franchise taxed, the court said that the State does not tax the right to do the thing, but fixes a value upon the privilege which has been enjoyed and taxes that value as property of the person who has exercised the privilege. It is never taxed unless property otherwise taxable is employed in the designated occupations. It is not an occupation tax and not a tax upon the mere privilege of engaging in the business. Three of the seven judges dissented on the ground that the company had adopted this method of delivery by means of tanks on cars because more convenient to its manufacturing business, and that it was not in the carrying business. James *v.* Kentucky Refining Co., 132 Ky., 353 (1908).

[b] A Kentucky corporation purchased a ferry right granted by Indiana authorities. The State of Kentucky assessed the company with a franchise item as follows: The board of valuation and assessment capitalized the entire net earnings of the company at 6 per cent. From this it deducted the assessed value of the company's realty in Indiana and tangible property in Kentucky, leaving a sum as the value of its franchise. The court of appeals of Kentucky held that "it is not the tangible or intangible property in Indiana which the appellant acquired by purchase which is sought to be taxed, but the value of its franchise which has been created in, and now exists in Kentucky." 108 Ky., 717 (1900). The Supreme Court of the United States said: "As stated by the court of appeals, the value of the franchise * * * was fixed 'as if it conducted all of its business in the territorial limits of the State of Kentucky,' making no deduction for the value of the franchise obtained from Indiana.' This latter "is an incorporeal hereditament derived from and having its legal situs in that State. It is not within the jurisdiction of Kentucky." Louisville & Jeffersonville Ferry Co. *v.* Ky., 188 U. S., 385 (1903).

[c] A foreign corporation engaged in interstate commerce along the Ohio and Mississippi Rivers, which owns no property within the State and does business therein only by landing and receiving passengers and freight, is not taxable under Stats. sec. 4077. Commonwealth *v.* Lee Line Co., 159 Ky., 476 (1914).

franchise,[a] pay the general property tax for state and local purposes on all property and franchises.[b] The State's portion of the tax on franchises is payable to the State, but the remaining portion, like all of the tax on the tangible property of these classes of corporations, is payable locally.[c]

The assessment of the tangible property of these companies is made by the local assessors.[d] Tangible personal property of

[a] A race-track company was held liable to the franchise tax. Latonia A. & S. Association *v.* Donnelly, 106 Ky., 325 (1899).

"The corporate property sought by this statute to be subjected to taxation may be said to be the added value which the exercise by the corporation of any special or exclusive privilege or franchise not allowed by law to natural persons gives to the tangible property. * * * It is conceded that a trading corporation has a franchise; but its franchise is merely a franchise to exist, to have a name, to contract and be contracted with, to sue and to be sued, in the same manner as a natural person, and this franchise is not a 'special or exclusive privilege or franchise not allowed by law to natural persons.' Nor can the appellant corporation be said to have any intangible property subject to taxation under this statute. * * * The value of its capital stock must necessarily be the value of its tangible property, choses in action, etc." Louisville Tobacco Warehouse Co. *v.* Commonwealth, 106 Ky., 165 (1899).

[b] The Commonwealth contended that the franchise to be taxed in the case of a gas company was a tax imposed upon the privilege of engaging in a business that a natural person could not engage in. The court said that that position could not be maintained; that natural persons might engage in the business; nor was it imposed upon the right to be such a corporation; that license taxes are imposed upon certain kinds of business, but not upon that of serving the public as do corporations like appellee gas company. "It is thus made clear that the tax imposed is a property tax, pure and simple. It groups all the property of the corporation, and values it according to its earning or producing capacity. In a sense the capital stock of the corporation represents all its property; but it was known that sometimes the market value of such stock differs from its actual value or earning value. The franchise value takes into consideration all these elements which go to make the real value of the corporation property considered as an entirety." Commonwealth *v.* Louisville Gas Co., 135 Ky., 324 (1909).

[c] State and local taxes on the tangible property of corporations assessed under sec. 4077 must be collected by the sheriffs, who must account for the State's portion to the auditor. Auditor *v.* Western Union Telegraph Co., 46 S. W. Rep., 704 (1898).

[d] Bonds, notes, accounts, cash, stock in other corporations, and other credits of a telephone corporation are intangible property and not subject to assessment by the local assessor, but are to be considered by the board of valuation and assessment in fixing the franchise tax. "The franchise tax under the statute is, as has been often held, simply a tax upon the intangible property of the corporation." Commonwealth *v.* Cumberland Telephone and Telegraph Co., 124 Ky., 535 (1907). See also Commonwealth *v.* Southern Pacific Co., 144 Ky., 803 (1911).

An ad valorem assessment on three sleeping cars of the Pullman Co. by the city of Covington was sustained, it appearing that for years past there was a daily average of three cars located in the yards to be cleaned and repaired. City of Covington *v.* The Pullman Co., 121 Ky., 218 (1905).

Where a municipality assesses the tangible property of a street railway company higher than the county does and the assessment of the latter is used by the state board of valuation and assessment as a basis for fixing the value of the franchise, the city may not use the franchise assessment determined by the state board as there would be double taxation by the city to the extent of the city's assessment of its tangible property over the valuation used by the state board in fixing the value of the franchise. City of Newport *v.* South Covington & C. St. Ry. Co., 156 Ky., 403 (1913).

domestic corporations located and having a taxable situs without the State is not taxed.[a]

The assessment of the intangible property or "franchise" is made by the board of valuation and assessment[b] in much the same manner as the franchise assessment of railroad companies.[c]

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[a] Stats., sec. 4020.

A car company organized under the laws of Kentucky owned 2,000 cars which were rented to shippers who took possession of them at Milwaukee, Wis., and used them for the carriage of freight in the United States, Canada, and Mexico, the company being paid in proportion to mileage made. It was held liable by the Kentucky Court of Appeals to taxation upon the entire number of 2,000 cars. 118 Ky., 131 (1904). The Supreme Court of the United States said: "There are doubtless cases in the state reports announcing the principle that the ancient maxim of *mobilia sequuntur personam* still applies to personal property, and that it may be taxed at the domicile of the owner, but upon examination they all or nearly all relate to intangible property, such as stocks, bonds, notes, and other choses in action. * * * The adoption of a general rule that tangible personal property in other States may be taxed at the domicile of the owner involves possibilities of an extremely serious character. * * * We are of opinion that the cars in question so far as they were located and employed in other States than Kentucky, were not subject to the taxing power of that Commonwealth." Union Refrigerator Transit Co. *v.* Ky., 199 U. S., 194 (1905).

[b] The franchise assessment of these companies for municipal taxation in cities of the first class is made by the respective city assessors. Stats., sec. 2984A.

No intangible assessment is made if the tangible property assessment covers the full value of the company's property. Interview with state tax officials, October, 1914.

[c] Stats., secs. 4077–84, 4090.

It was "contended that the board should have deducted the indebtedness of the appellants, and the cost of operating their business, from the value of their franchises. * * * No such rule of valuation is applied to any other property. * * * It is a well-known fact that the vendee of a farm may owe all of the purchase money, and yet he must list his land at its fair cash value, while the vendor is also required to pay tax upon the purchase money." Paducah St. R. Co. *v.* County, 105 Ky., 472 (1899).

"In determining the value of the entire capital stock" of domestic corporations, "the board has a large discretion. It may accept the statement reported under sec. 4078 as the basis of value, or it may take other evidence. It has the right to accept the sale price of the shares, add the surplus to capital, or capitalize net earnings by fixing as its value a sum which at six per cent interest would realize an amount equal to the net earnings of the corporation. Indeed we know of no reason why it may not even combine these several processes in determining the value of the entire capital stock." Hager *v.* American Surety Co., 121 Ky., 791 (1906).

The scheme of taxation in secs. 4077–81 was held by the United States Supreme Court as not in contravention of the commerce clause or the Fourteenth Amendment of the Federal Constitution. The word "franchise" was not employed in a technical sense, and the legislative intent is plain that the entire property, tangible and intangible, of all such foreign and domestic corporations should be valued as an entirety, the value of the tangible property to be deducted, and the value of the intangible property thus ascertained to be taxed under these provisions. The intangible property of the companies mentioned in sec. 4081 should be assess d on the basis of the mileage of their lines within and without the State. But from the valuation on the mileage basis the value of all tangible property is deducted before the taxation is applied. Considered as a property tax it was regarded as in harmony with the pro-

Apportionment of franchise assessments of telegraph,[a] telephone, express, and car[b] companies for local taxation, is made in similar manner as the apportionment of franchise assessments of railroad companies. The franchise assessments of local street railway, electric light and power, water, gas, ferry, bridge, packet, guaranty, surety, and other classes of corporations exer-

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visions of the Kentucky constitution. Four of the justices dissented, saying: "The levy here sought to be sustained, then, is a franchise tax, assessed on a joint-stock company which has no franchise, for the bill alleges that the express company is a partnership and the demurrer concedes it. The effect of holding the tax now in question valid, is to decide that a franchise can be taxed, when there is no franchise on which to levy the tax. This can only be escaped by contending that the right of the express company to do interstate commerce business in Kentucky resulted from the assent of the State, and therefore the doing of such business was equivalent to accepting a franchise from the State." Adams Express Co. *v.* Ky., 166 U. S., 171 (1897).

The following points appear in another case on a later assessment of this company: If tangible property having a situs outside the State be included in the valuation of the company's intangible property, the purpose of the law, being to tax only intangible property, is defeated. "This method of ascertaining the value of the intangible property of this corporation called in the act 'its franchise' was grossly erroneous. No deduction was made for the tangible property of the company save that assessed as such in Kentucky. * * * The mode of appraisement followed was also erroneous" in that the existence outside the State of intangible property, which constituted no part of the general plant or franchise, was ignored. In estimating the value of intangible property of companies whose lines extend beyond the State the law of Kentucky does not require that that value shall be taken as always equal to the market value of its shares and bonded debt, after deducting actual tangible property. It was the plain duty of the board to eliminate such an item. In refusing to deduct the special investments so having a special situs in New York, the board misconstrued the law and exceeded its authority. Coulter *v.* Weir, 127 Fed. Rep., 897 (1904). Similar decision on Indiana assessment, Fargo *v.* Hart, 193 U. S., 490 (1904).

[a] "This taxation assumes that there is used in the common business of the companies, corporations, and associations inside the State an average proportion of its intangible property. Notwithstanding the use of the words 'franchise' and 'corporate franchise' in the several sections of this statute, we are of the opinion that the property to be taxed under its provisions as intangible property is not confined to franchises or corporate franchises, but it is intended to include all intangible property, by the mode indicated, whether or not such property be legally 'franchises' or 'corporate franchises.' It is not a tax upon an occupation or franchise granted by other States or by the United States, but a tax upon the property owned and enjoyed by these several associations, companies, and corporations, which is claimed to be within the taxing power of the State. * * * The provisions of section 174 of the constitution * * * do not preclude intangible property which is owned by a corporation from being taxed. * * * The law as it stands does not violate either the Federal or the State Constitution." Western Union Telegraph Co. *v.* Norman, 77 Fed. Rep., 13 (1896).

[b] The franchise of a Kentucky car corporation which owned refrigerator cars, all of which were rented to one concern, a packing-house company, should be assessed under sec. 4081, for the benefit of the localities where the cars operate, and not under sec. 4241 for the benefit of the town where its principal place of business is. A small number of the cars were operated in Kentucky, and these were held taxable in that State. Morrell Refrigerator Car Co. *v.* Commonwealth, 128 Ky., 447 (1908).

cising any special franchise, are apportioned to the county and locality where the franchise is exercised,[a] and if the business of such companies extends into another State the amount of franchise taxable in Kentucky is based on a capitalization of net earnings from business in the State and on the proportion of the value of the capital stock and indebtedness which the gross receipts in Kentucky bear to the total gross receipts of the company, less the value of property locally assessed in the State.[b]

Turnpike Companies.

Turnpike companies pay locally for state and local purposes the general property tax on tangible property and franchises. The tangible property is assessed by the local assessors,[c] and the franchise or intangible property is assessed by county boards of supervisors.

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[a] This section does not violate sec. 181 of the constitution. It does not levy a tax for a local purpose, "but merely fixes a basis for determining the value of certain franchises. * * * As a matter of law, the valuation by the state board of the property was, in law, conclusive as to its value for city assessment." South Covington & Cin. St. R. Co. *v.* Bellevue, 105 Ky., 283 (1899).

All such franchises, except in cities of the first class, are to be assessed by the board of valuation and assessment. City of Cov. *v.* Cov. & Cin. Bridge Co., 126 Ky., 163, (1907).

The valuation of the franchise of a water company conferred by a city and confirmed by the legislature must be assigned to the city. The franchise must be exercised wholly within the city. The tangible property outside the city, its pumping station and reservoir, may be taxed where situated. The state board has no authority under sec. 4081 to apportion the franchise between the city and the county, the only right it has to make such apportionment is as to corporations which from their nature, conduct their business in different jurisdictions such as sleeping-car companies, express companies, etc. Bd. Council Frankfort *v.* Stone, 108 Ky., 400 (1900).

[b] Sec. 4080 does not provide alternative methods, which would be a delegation of the power by the legislature and ultra vires and void, but provides an additional means of evidence. The word "or" was evidently intended to be "and." The second calculation fixes the value of the capital stock in the State at the proportion of its entire capital stock, surplus, and undivided profits which its gross business in Kentucky bears to its gross business everywhere. James *v.* U. S. Fidelity & Guaranty Co., 133 Ky., 299 (1909).

Prior to 1906 the statutes did not authorize a capitalization of net earnings in the State as the basis for taxation of the corporate franchise of a foreign corporation. Hager *v.* American Surety Co., 121 Ky., 791 (1906).

In the case of guaranty and surety companies the percentage which the gross income within the States bears to the entire gross income is applied to the total net earnings to get the State's portion. This result is capitalized at 6 per cent to obtain the taxable value within the State. Interview with state tax officials, October, 1914.

[c] Stats., sec. 4095.

This method is exclusive, and it is the duty of such boards to certify to each taxing district the value of such franchise for taxation purposes in that district. Campbell Turnpike Road Co. *v.* District of Highlands, 130 Ky., 812 (1908).

Manufacturing, Mercantile, Mining, and Miscellaneous Corporations.

Manufacturing, mercantile, mining, and miscellaneous corporations, domestic and foreign, pay the general property tax locally for state and local purposes.[a] Certain classes pay a state license tax of fixed sums, and all other classes pay an annual state license tax based on authorized capital stock.

Machinery, raw materials, manufactured articles, merchandise, notes, accounts, and cash on hand are separately listed for local assessment.[b]

Corporations paying fixed sums as a state license include:[c] Companies reporting upon the credit of resident business establishments, $100;[d] ice factories, from $15 to $30; bottling establishments, $25; steam laundries, $10; steam ferries not paying any other license tax, $25; retail oil dealers, $15 per wagon used;[e] foreign packing corporations, 50 cents per $100 gross sales in the State.

All corporations of the above-named classes, not paying fixed license taxes, pay an annual state license tax of 30 cents on each $1,000 of that part of their authorized capital stock represented by property owned and business transacted in the State.[f] The

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[a] New manufacturing establishments may be exempted from municipal taxation in cities for a period of five years. Const., sec. 170; Stats., secs. 2980, 3074, 3278, 3490.

[b] Stats., sec. 4058.

[c] Ibid., sec. 4224.

[d] U. S. Fidelity & Guaranty Co. of Maryland held liable. U. S. Fidelity & Guaranty Co. *v.* Commonwealth, 133 Ky., 740 (1909).

This license tax is not unconstitutional as a burden on interstate commerce as applied to a nonresident engaged in publishing and distributing a selected list of guaranteed attorneys throughout the United States and having a representative in Kentucky. U. S. Fidelity & Guaranty Co. of Baltimore *v.* Kentucky, 231 U. S., 394 (1913).

[e] Selling and delivering oil from a tank wagon to merchants in quantities of not less than 25 gallons, for resale to customers, is a "selling by retail." Standard Oil Co. *v.* Commonwealth, 119 Ky., 1 (1904).

[f] Stats., sec. 4189a–i.

Where an oil company was held liable for a franchise assessment on its tank-car business, and it asserted that it had paid a license tax upon all its capital employed in the state in refining and in tank cars, the court said that doubtless credit might be had on the franchise tax sought to be enforced for any excess so paid on this license-tax assessment, for it was undeniably liable on its capital, so far as the capital was not employed in the carrying business. James *v.* Kentucky Refining Co., 132 Ky., 353 (1908).

A corporation engaged in the ice and cold-storage business paid a license tax on its ice factories. As it was not liable to any fixed license tax upon its cold-storage business, so much of the capital stock as was used in the cold-storage business was held liable to a license tax based on authorized capital stock. Merchants' Ice & Cold Storage Co. *v.* Commonwealth, 154 Ky., 452 (1913).

minimum fee, however, is $10. The amount of these state taxes is fixed by the board of valuation and assessment from reports of the companies and from such other information as the board may secure. Companies failing to make reports to the board are required to pay upon their entire authorized capital stock.

Stockholders and Bondholders.

Shares of stock in public-service corporations, domestic or foreign, are not taxed to the individual holder if the corporation pays its taxes upon the corporate property and franchises,[a] nor are the

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[a] Stats., sec. 4088.

A resident holder of stock in the Western Union Telegraph Co. was not required to list it for taxation. The court said: "The corporation itself * * * fully complied with the laws of Kentucky governing the taxation of foreign corporations doing business and exercising a franchise within this State," and paid all taxes assessed against it. "There are two kinds of corporations treated of in our statutes on revenue and taxation. One kind is that which has or exercises some special or exclusive privilege or franchise, * * * which must pay a franchise tax 'in addition to other taxes imposed by law,' * * * the other is the commercial corporation, which enjoys no privilege not exercised by natural persons, and which does not pay a franchise tax." Consistently throughout the decisions of the court of appeals "it has been held that the tax laid upon the corporate franchise is a property tax purely, and is in fact the taxation of all the intangible property of the corporation, including its capital. * * * The statute makes no distinction between corporations that pay upon all, or a majority, of the stock as a part of their franchise in this State, and those that pay upon less than a majority. In truth the very requirements of the statutes show * * * that the purpose was to tax that only which was here, and that in every instance, without exception, where the franchise and property tax is paid by the corporation, that that settled the bill, and the shareholder need not bother about it." Commonwealth *v.* Walsh's Trustee, 133 Ky., 103 (1909).

A gas company disposed of its electric lighting plant and took in payment stocks and bonds of the new company. "The gas company's liability to taxation upon the shares of the lighting company owned by it are precisely the same as on other shareholders. It is conceded that the lighting company was assessed and paid its franchise tax. Being so, the shareholders are not assessable. So appellee was not required to pay upon so much of its intangible property as was represented by those shares, a fact doubtless taken into consideration by the state board in fixing the value of appellee's franchise. * * * But upon the bonds appellee was required to pay precisely as it did upon its other intangible property; that is, the bonds, and their market value and earning quality were pertinent facts to be reported to the state board and in estimating the value of appellee's franchise those bonds were considered, or ought to have been, as any other chose in action owned by appellee." Commonwealth *v.* Louisville Gas Co., 135 Ky., 324 (1909).

"Conceding it to be true * * * that by sec. 4088 the stock of the individual stockholders of a railroad corporation becomes liable to taxation if the corporation itself fails to pay the taxes on its corporate property and franchises, it does not follow that this stock is taxable anywhere else than the residence of the owner." Commonwealth *v.* C. & O. Ry. Co., 116 Ky., 951 (1903).

A trust company, owning stock of a Kentucky corporation which as such pays taxes upon its property and franchises, was relieved from an assessment on such stock. Louisville Trust Co. *v.* Stone, 107 Fed. Rep., 305 (1901).

stockholders of other corporations assessed therefor if the corporation pays the taxes on all of its property.[a]

Corporate bonds are subject to taxation in the hands of the resident holder.[b]

Foreign Corporations.

Foreign public-service corporations are subject to the same method of assessment and rate of taxation on tangible property and franchises [c] as similar domestic corporations. The annual corporation license tax applies to the nonfranchise classes of corporations, foreign and domestic alike, except foreign insurance companies [d] which are subject to a tax on premiums. Business license taxes apply to foreign and domestic corporations of the same class alike, with the exception of the tax on slaughtering and packing companies, which is imposed on foreign corporations only.

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[a] Stats., sec. 4085.

"The holders of shares of stock in domestic or foreign corporations whether franchise or nonfranchise in nature, need not list or pay taxes upon their shares of stock when the corporation in which the stock is held has paid all taxes due from it, and assessable against it, upon its property located in the State of Kentucky, whether that property be realty, personalty, tangible or intangible, or franchise, in nature." Commonwealth *v.* Fidelity Trust Co., 147 Ky., 77, 84 (1912).

As to business or trading corporations located in the State (Owensboro Wagon Co.), the stockholder therein becomes liable only in the event that the corporation fails to pay its taxes. Commonwealth *v.* Steele, Commonwealth *v.* Hickman, 126 Ky., 670 (1907).

Shares of stock of a New Jersey holding corporation are not taxable, where the property they represent has been taxed in the State. "The 'right to be' is not a subject of taxation under either the laws of this State, or the laws of New Jersey." Commonwealth *v.* Ledman, 127 Ky., 603 (1907).

Stock in a foreign corporation held by a resident of the State was held not exempt, notwithstanding the corporation paid taxes on certain real property in this State. "The foreign corporation does not pay taxes to this State upon its corporate franchise, or upon any of its personal property, and therefore its shares of stock do not come within the purview of the statute." Commonwealth *v.* Lovell, 125 Ky., 491 (1907).

[b] Stats., sec. 4058.

[c] Commonwealth *v.* Walsh's Trustee, 133 Ky., 103 (1909).

[d] The retaliatory taxation law applicable to foreign insurance companies, Stats. 637, has been declared unconstitutional, the court saying: "The power of the legislature to enact laws whose operation will depend upon the approval of any other authority is denied, except in the cases named in the constitution. * * * The constitution clearly imposed upon the general assembly the duty of determining what levy was necessary, and required it by a general law to levy such a tax as was necessary, the tax to be equal and uniform. * * * To allow one person to be taxed at one rate and another at a different rate, not because of any other fact than to retaliate for the mode in which a corporation of this State is taxed in some other State, is to lose sight entirely of the fundamental idea of equality in the public burdens aimed at in our constitution." Western & Southern Life Insurance Co. *v.* Commonwealth, 133 Ky., 292 (1909).

III. FINANCIAL RESULTS.

Classification of Revenue.

The proportion of total state taxes for state purposes derived from corporations for 1912 was approximately 17 per cent.

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED JUNE 30, 1912.[a]

Total state receipts, all sources		$7,229,477.59
State taxes from corporations:		
Railroad companies, tax on tangible property	$335,744.92	
Railroad companies, tax on intangible property [b]	3,168.00	
Public-service corporations [c]	5,817.03	
Corporation license tax	85,847.37	
Corporation organization tax	138,972.30	
Insurance companies	362,340.81	
Banking companies	147,379.73	
Total ascertainable state taxes from corporations		1,079,270.16
Other taxes:		
Sheriffs' revenue (general property tax)	4,087,378.21	
Clerks' revenue (liquor license)	353,010.00	
Clerks' and trustees' revenue (other licenses)	223,848.86	
Liquor tax	214,199.08	
Dog tax	115,911.99	
Inheritance tax	101,577.28	
Motor licenses	31,255.30	
Tax on meats	551.55	
Total ascertainable state taxes not from corporations		5,127,732.27
Total taxes for state purposes, all sources		6,207,002.43
Receipts from sources other than taxes:		
Penitentiary and house of reform	398,248.44	
Fines and forfeitures	255,675.83	
Jefferson County fees	244,156.43	
United States aid to colleges	50,000.00	
Fees, miscellaneous	19,001.41	
Interest on state deposits	9,631.91	
Court of appeals	8,231.55	
Miscellaneous receipts	37,529.59	
Total receipts from sources other than taxes		1,022,475.16
Total state receipts, all sources		7,229,477.59

[a] Report of Auditor of Public Accounts, 1912–13, pp. 13–15.

[b] The amount of taxes assessed on intangible property of railroad companies for 1911 was $213,946.97 and for 1912 $576,297.02.

[c] The tax on the tangible property of these corporations is collected locally and the amount can not be estimated. For the year ended June 30, 1913, there was collected from the taxation on the intangible property of these corporations for state purposes $132,882.21.

IV. COMMENTS.

Historical.

Many early corporate charters granted by Kentucky contained provisions exempting property from taxation; some were limited in time,[a] and others unlimited except as to dividends in excess of the legal interest rate.[b] An act of 1856, however, provided that all charters or amendments thereof, as well as other statutes, should be subject to amendment or repeal at the will of the legislature, unless a contrary intent were therein plainly expressed,[c] and, as a consequence, exemptions under special laws have now entirely disappeared. Prior to 1864 railroad property was not assessed,[d] other than under the law applicable to individuals.[e] But in that year all railroads were subjected to a fixed assessment of $20,000 per mile, to which was applied the same rate as that applied to real estate.[f] By an amendment in 1873 narrow-gauge railroads were assessed at $10,000 per mile.[g] The same law taxed turnpike companies at the rate of 6 per cent on net dividends, insurance companies at the rate of 6 per cent on net profits, and telegraph companies at the rate of 50 cents per mile of wire,[f] and exempted the holders of stock in corporations paying these taxes. Railroad property was not subject to county levies under the law of 1864,[h] but in 1876,[i] it was required to be listed for county taxation.[j]

In 1878[k] the State Board of Equalization was created and required to assess railroad property not at the fixed valuation per mile but at its value. Two years later, however, this duty was transferred to the railroad commission.[l] By a general act in 1884,[m] newly constructed railroads were exempt from all taxation for five years from commencement of construction, but the consti-

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[a] Laws 1830, chap. 293, sec. 20; Laws 1833, chap. 206, sec. 20.

[b] Laws 1836, chap. 371, sec. 43; Laws 1837, chap. 231, sec. 42.

[c] Act of Feb. 14, 1856, chap. 148.

[d] Commonwealth *v.* L. & N. R.R. Co., 149 Ky., 829 (1912).

[e] In a suit by the Commonwealth against the Louisville & Nashville R. R. Co. for back taxes for the years 1856–63, it was held that the property of the company was liable to taxation under the general revenue law subjecting to taxation the estate of "persons" not therein excepted. Louisville & N. R. Co. *v.* Commonwealth, 64 Ky., 250 (1867).

[f] Acts of 1863–64, p. 101.

[g] Act approved Mar. 19, 1873, chap. 429.

[h] Louisville & N. R. Co. *v.* Warren County Court, 68 Ky., 243 (1869).

[i] Act of Mar. 17, 1876, chap. 785.

[j] Lincoln County *v.* Louisville & N. R. Co., 3 Ky. Law R., 436 (1881).

[k] Act of Apr. 3, 1878, chap. 764.

[l] Act of Apr. 29, 1880, chap. 1297.

[m] Acts of 1883–84, chap. 1632.

tutionality of the exemption was questioned, and in 1892 many of the railroads affected paid the full amount of their taxes, including taxes for intervening years.[a]

Special methods of taxation were prescribed for telegraph, telephone, and express companies in 1886. Telegraph companies were required to pay to the State a tax on wire mileage, telephone companies a tax on gross receipts from business within the State, and express companies an annual tax of $1,000 if their lines in the State were of greater length than 100 miles, and $500 if the length was less than 100 miles. These methods of taxation prescribed for telegraph and express companies were judicially declared unconstitutional.[b]

Franchise Assessment.

The present method of assessing, as a separate item and by a special board, the franchise or intangible value of all public-service and certain financial corporations was introduced in Kentucky in 1892.[c]

For the first few years after the passage of the act only a small number of corporations were affected, the assessing body finding no additional value over the assessment fixed for the tangible property. Even later, though franchise assessments were certified against railroads for state taxes, no assessments against these companies were certified for local taxation until suit was brought in 1900 by the counties.[d]

As to the methods adopted in fixing the values of franchises, adjudicated cases afford the only official evidence. Thus, in approving the assessment against a railroad company for the year 1896 the court upheld the Board of Valuation and Assessment in reaching a conclusion as to the value of the capital stock by a consideration of the gross and net earnings.[e] In later cases the action of the board was sustained in applying the stock and bond plan after a consideration of the earnings;[f] and in capitalizing the net income at 6 per cent on a two-year basis.[g] A dissenting opinion in the last-mentioned case, however, called attention to the fact that the cost of property assessed together with other assets equaled

[a] Report of the Railroad Commissioners, 1892, p. 40.
[b] Commonwealth *v.* Smith, Commonwealth *v.* U. S. Express Co., 92 Ky., 38 (1891).
[c] Act of Nov. 11, 1892.
[d] Southern Ry. in Ky. *v.* Coulter, 113 Ky., 657 (1902).
[e] Louisville Ry. Co. *v.* Commonwealth, 105 Ky., 710 (1899).
[f] Henderson Bridge Co. *v.* Commonwealth, 99 Ky., 623; 166 U. S., 150 (1897).
[g] Henderson Bridge Co. *v.* Negley, 63 S. W. Rep., 989 (1901).

only $703,000, while the valuation found by the board was over $3,000,000; and that the apparently high income arose from the fact that there was no charge for management, which was provided by the railroad company using the property or bridge in question.

A method of assessing franchise suggested as proper by the court in a case involving the assessment of a bridge company owning a bridge spanning a boundary river of Kentucky was, in substance, to take that percentage of the total value of the stock and bonds represented by the portion which the length of the bridge taxable in Kentucky bore to its entire length. It was suggested that the result would represent the entire taxable value in Kentucky, and the remainder found after deducting the assessment of tangible property in the State would represent the value of franchise.[a]

During the following year a rather complete analysis of the capitalization of net earnings and of the stock and bond plan, and of the basis for determining the entire value and the value taxable in Kentucky, was given by the court in a decision sustaining an assessment made by the board against a certain railroad corporation.

The court stated, in substance, that it did not find it necessary to express a preference between the two plans, but that it seemed reasonable to hold that if the stock and bond plan is adopted the board should not, as a rule, base its assessment on the market value of the stock and bonds as found on a single day, or on the average market value for a year previous thereto, or, if the capitalization plan is adopted, it should not, as a rule, confine itself to the net income for the year previous to the date of assessment, but that in each case it should use an average based on not less than five-year periods, because it is essential to consider a sufficient period to show the settled condition of things. The court, however, specifically stated that it should not be understood as laying down any hard and fast rule to be applied in every case.

As to the plan to be pursued in ascertaining the proportion of the fair cash value of the entire property which properly is taxable in the State, the court called attention to the fact that the legislature at first acted upon the idea that the mileage in and out of the State should be assumed to be of like character and of equal value, but afterward amended the law so that the board might be

[a] Commonwealth *v.* Cov. & Cin. Bridge Co., 114 Ky., 343 (1902).

at liberty to consider the difference in character and value, if any, between the mileage in and out of this State.

In considering whether the board valued the property at its fair cash value, the court said that the board had ascertained the value of the property on a capitalization plan, taking into consideration the average net earnings of the entire property for the preceding four years, while a similar capitalization for five years would have been 5⅞ per cent less; had the board adopted the stock and bond plan based on the preceding five years, the valuation would have been 4⅞ per cent less. Tentatively they adopted the stock and bond plan, considering only the average market value for the preceding year, which gave a valuation of 6⅔ per cent more than they finally decided upon. Twenty-six per cent of the total mileage of the system being assigned to Kentucky, that percentage of the total valuation was determined to be the value within the State.[a]

At its 1906 session the board valued the corporate franchise of a foreign surety company by taking its net earnings in the State for the previous year and ascertaining the sum which would produce such net income at 6 per cent. The court, in deciding, held that the board was not authorized to follow such a method, but that the value of the entire capital stock and bonded indebtedness must first be determined, and, after finding the proportion which the gross receipts in the State is to the gross receipts of the company everywhere, it must take the same proportion of the value of its capital for the taxable value of the corporate franchise;[b] however, the law was amended so as to permit the use of the former plan,[c] and also the plan of fixing the capital stock in the State by capitalizing the net income derived in Kentucky, and from a consideration of these two items it could fix the value of the corporate franchise. Quite different figures may be reached by these two methods: the franchise value of the American Surety Co. for the year 1906, for example, would be, by the former method of computation, $24,367.94, and by the latter method $122,084.[d]

Situs.

Under provisions of law that all personal estate of domestic corporations, wherever located, should be assessed at fair cash

[a] Louisville & Nashville R. R. Co. *v.* Coulter, 131 Fed. Rep., 282 (1903).
[b] Hager *v.* American Surety Co., 121 Ky. 791 (1906).
[c] James *v.* U. S. Fidelity and Guaranty Co., 133 Ky. 299 (1909).
[d] James *v.* American Surety Co., 133 Ky. 313 (1909).

value, all the cars of a Kentucky freight-line company were assessed for taxation, though the cars were used in traffic all over the United States. The assessment was sustained by the Kentucky courts,[a] but the Supreme Court of the United States on an appeal held that the State could not tax such tangible property outside the limits of the State.[b] The law was later changed to avoid any attempt to subject to taxation tangible personal property of domestic corporations located and having a taxable situs without the State.[c] Vessels owned by a corporation chartered under the laws of Kentucky, operating entirely outside the State, have a taxable situs at the domicile of the owner.[d]

Special Tax Commissions.

In 1904 a Special Tax Commission was appointed by the senate with instructions to investigate the relative merits or equity of ad valorem, license, and franchise taxes, and the extent each may be increased or diminished without impairing the progress and development of the State or discriminating in the burdens of taxation. Among the Commission's findings were that less than 35 per cent of the personal property of the State was assessed for taxation, that property other than personalty was inadequately or indifferently assessed, and that one of the imperative needs of the revenue law was a more exacting method of assessment.[e]

Following the recommendations of this commission, the present law was enacted imposing an annual license tax on certain corporations not subject to a franchise or license tax, based on authorized capital stock employed in the State, and an inheritance tax. During the consideration of this bill in the senate an amendment was proposed to exempt resident stockholders of all corporations paying taxes on their capital stock, franchise or other property, wherever located, but this amendment was rejected.[f]

In December, 1908, the Governor requested two groups of prominent and influential residents of the State—one of which he designated as a tax commission, and the other an advisory commission—to recommend changes needed in the revenue system of

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[a] Commonwealth *v.* Union Refrigerator Transit Co., 118 Ky. 131 (1904).

[b] Union R. T. Co. *v.* Kentucky, 199 U. S. 194 (1905).

[c] Stats. sec. 4020.

[d] Commonwealth *v.* Southern Pacific Co., 134 Ky. 417 (1909); affirmed Southern Pacific Co. *v.* Kentucky, 222 U. S. 63 (1911).

[e] Journal of the Senate, 1906, p. 148.

[f] Ibid., p. 1372.

the State. The investigations and conferences of this commission led them to the conclusion:[a]

"First—That there is throughout the State very general and well-grounded dissatisfaction with the tax system, based on the fact that in many of our towns and cities the combined tax rate for State, city and county purposes imposes a most onerous burden, and upon the further fact that, in spite of the utmost efforts of the assessing officers and equalization boards to see that all taxable property is listed, a great deal of property escapes taxation entirely, with resulting injustice to such classes of property as can not escape. We found also considerable dissatisfaction with some of the administrative features of the present revenue laws.

"Second—That while some of these causes of complaint might be removed by statutory amendment the greater part of them, including all that are most material, are beyond remedy through statutory enactment. Amendments to the statutes only will not, in our opinion, meet the requirements of the situation.

"Third—That so long as the State adheres to its present system of taxation fixed by Constitutional provisions, it will impose upon its citizens a very serious handicap in the competition with the citizens of other states more favored in their tax laws, and must inevitably lose both desirable population and much-needed capital.

"We would sum up the complaints and defects in the system of taxation in Kentucky as follows:

"First—It does not produce sufficient revenue for the proper support of the State and local governments, including necessary provision for public improvements, and it can not be made to produce sufficient revenue, in spite of constantly increasing the tax rate, the tax rate being already so high in very many counties of the State that to further increase it merely offers an additional incentive for undervaluation of property and evasion of assessments.

"Second—It unjustly places an undue portion of the public burden on some classes of property, and especially upon real estate, while permitting other classes of property entirely to escape taxation.

"Third—Its inequalities have resulted in driving and keeping from the State a large amount of capital that is needed in the development of its business.

"Fourth—It produces evasion, dishonesty and perjury; encourages contempt for the law, and lowers the moral standard of our people. * * *

"We, therefore, advise and strongly urge that the Legislature be asked to submit to a vote of the people an amendment to section 171 of the Constitution, designed to provide, in substance, not

[a] Tax Revision, State of Kentucky, 1909, pp. 2–8.

that taxes shall be *uniform on all classes of property*, as at present, but that taxes shall be *uniform upon all property of the same class*, and, furthermore, to confer distinctly upon the Legislature the power to *classify the source of revenue*, designating certain sources of revenue exclusively for State purposes, certain other sources of revenue exclusively for city purposes, and certain other sources of revenue exclusively for county purposes.

* * * * * * *

"We desire to state with emphasis that, in our opinion, relief from practically all the unnecessary burdens and unjust discrimination complained of under our present tax laws would be secured by the system of classifying the subjects of taxation and separating the sources of revenue. * * *

"In general, under such a division, the State revenues would be raised by taxes on corporations, on franchises, on certain licenses, on bonds, money at interest, and similar forms of personal property, in addition to the various forms of special taxes which in Kentucky are capable of considerable development, although already yielding a large part of the State's revenues.

"The cities would raise their revenues from city real estate, from public utilities, from mercantile license taxes, and similar property, an equitable arrangement being made for the city to contribute for its share of the county expense.

"The counties would raise their revenues by direct tax on real estate and livestock and such tangible forms of personalty, and the real estate and personalty so taxed would be taxed for no other purpose. The farmer would pay on his farm and livestock and farming implements a local tax and no more—a tax for the support of his county government directly under his own control. He need not then fear that through inequalities in the assessment he would be made to bear a greater proportion of the State expense than property owners in other counties."

Another special tax commission was provided for by the Legislature of 1912,[a] whose duties were to recommend a plan for the revision of the revenue laws. Its conclusions as published in its first report, dated February 12, 1913, were, in the main, similar to those of the commission appointed in 1908. In referring to the system of taxation at that time existing in the State, the report, in part, read as follows:

"The taxes paid by the farmers in Kentucky for local and state purposes are equivalent to an income tax of about 10 per cent. The taxes paid by the manufacturers and public-service corporations amount to about 2 per cent of their income. Persons engaged in agriculture with an average yearly income of $500 pay about $50 per capita, annually, for taxes. Persons engaged

[a] Laws 1912, pp. 680–82.

in manufacturing and investments in stocks and bonds pay with an average income of about $870 about $16 per capita taxes per annum. These are mere estimates made from the most available statistics gathered from the Census Bureau and from other sources, but are not stated to be absolutely correct.

"The chief tax, called a general-property tax, levied by the State, has, under the system by which it has been enforced, practically become a real-estate tax as only a very small per cent of the entire taxes is levied on personal property.

"The system of equalization under the law now in effect, does not equalize, and in the nature of things, can not equalize. After the officers have exhausted their best efforts in this direction, there are inequalities—glaring ones—between real estate and personal property; between different classes of personal property; between county and county; between city and city; between city and county; and between man and man.

"Under the present system of revenue and taxation it is impossible to adjust the burdens of taxation equitably between the different classes of persons and different classes of corporations."

Among the recommendations made in this report were:

First. A constitutional amendment authorizing the classification of property for taxation.

Second. The creation of a state tax commission, a central board, with authority to supervise the assessment for taxation and the collection of revenue.

Third. County maps, the commission believing that no accurate or complete assessment of lands could possibly be made without them.

The final report of this special tax commission consisted largely of a discussion of the present tax system, its defects and the remedies therefor, and a draft of bills covering the whole subject of revenue and, in particular, the changes recommended by the commission. Among the changes recommended were: The establishment of a permanent central tax commission with supervision over local assessments and with the duty of assessing the railroads, franchises, and other property now assessed by ex-officio boards.[a]

It was proposed also that the property, tangible and intangible, of all public-service corporations lying in two or more counties should be assessed by the proposed state tax commission and that the latter should make ad valorem franchise assessment for state and local purposes against all manufacturing, mercantile, and miscellaneous corporations, in lieu of the present annual license tax

[a] Report of the Special Tax Commission of Kentucky to the Legislature, December, 1913, p. 9.

for state purposes based on amount of capital stock employed in the State.[a] No action was taken by the Legislature of 1914 on the bills proposed by this special tax commission.

Classification of Property.

The constitutional amendment, proposing to give the legislature authority to classify property for taxation and to determine what class or classes should be subject to local taxation, was voted upon at the 1913 general election, but while it received a favorable vote failure to observe the statutory requirements made the submission invalid. However, practically the same amendment has been proposed by the 1914 Legislature and will be voted upon in November, 1915. The latter amendment further specifies that all tax laws classifying property or separating sources of revenue passed prior to 1917 must be submitted by the legislature through the referendum to the people, and such laws passed after 1917 may be referred to the people either by the legislature or on petition of the voters.[b]

The special tax commission recommended, conditioned on the adoption of the constitutional amendment permitting classification of property, the taxation for state purposes of mortgages, bonds, and shares of stock in corporations whose property is not taxed in Kentucky; the rate proposed was 40 cents per annum on each $100 of value, which would be in lieu of all other taxation of these securities.[c]

Bibliography.

The following is a list of the more important publications, in addition to the constitution, statutes, and court reports, of value in the study of corporate taxation in Kentucky:

Report of Special Tax Commission, Senate Journals, 1906, 1908.

Tax revision, State of Kentucky, 1909 (report of tax commission and advisory commission appointed by the Governor).

Report of Kentucky State Tax Commission to the Governor, February, 1913.

Report of Special Tax Commission of Kentucky to the Legislature, December, 1913.

Biennial Report of Auditor of Public Accounts, 1912–13.

Biennial Report of Attorney General, 1912–13.

Proceedings of the National Tax Association, 1909, 1910 and 1912.

[a] Report of the Special Tax Commission of Kentucky to the Legislature, December, 1913, p. 142 et seq.

[b] Laws 1914, chap. 94.

[c] Report of the Special Tax Commission of Kentucky to the Legislature, December, 1913, p. 240 et seq.

TENNESSEE.

I. GENERAL VIEW.

Chief Features.

First. The application of the general property tax for both state and local purposes to practically all property of the classes of corporations treated in this report, supplemented in many instances by privilege taxes on corporations.

Second. The assessment of certain important classes of corporations by a central state board.

General Property Tax.

Domestic and foreign transportation, transmission, manufacturing, and mercantile companies pay the general property tax for state and local purposes.

All property of railroad, freight-car, and interurban and street railroad companies, and the distributable property of telegraph and telephone companies, are assessed by the railroad commission acting as a board of state tax assessors, and the counties through which the lines pass receive the respective portions of the valuation to which they are entitled. Other corporate property is assessed by the local assessors.

Taxes Supplemental to the General Property Tax.

In addition to the general property tax, domestic and foreign corporations of the classes herein treated pay to the State for state purposes an annual tax graduated according to the amount of capital stock, designated hereinafter as the capital-stock or annual charter tax. In addition, telegraph and express companies pay to the State for state purposes annual privilege taxes graduated according to miles of wire or route, and telephone companies a similar tax on each instrument, while sleeping-car companies pay an annual state privilege tax of a fixed amount.

Stockholders and Bondholders.

All bonds of corporations of the classes herein treated and all shares of stock, except shares in manufacturing corporations, are taxable to the holders.

Foreign Corporations.

Foreign corporations of the classes covered by this report, are taxed on practically the same basis as domestic corporations.

Administration.

The State Railroad Commission, which is ex-officio the board of state tax assessors, consists of three members, one from each grand division of the State (middle, eastern, and western Tennessee), one member being elected every two years to serve six years. It assesses the property of steam, interurban and street railroad, and of freight-car companies, and the distributable properties of telegraph and telephone companies.[a] It has power to summon witnesses and secure the production of any books deemed necessary.[b] A special board of equalization composed of the governor, treasurer, and secretary of state, equalizes the assessments of the distributable and localized properties of railroad, interurban and street railroad, and freight-car companies, and of the distributable properties of telegraph and telephone companies.[c]

The governor may convene the board of state tax assessors (railroad commissioners acting as such) to reassess, if he deems such action necessary, any railroad, telegraph, or telephone company.[d]

Other corporations are assessed by the local tax assessors.[e] The assessments are equalized by the general state board of equalization, composed of the secretary of state, treasurer, and comptroller, which board has jurisdiction of and equalizes the assessments of all properties in the State, other than those mentioned in the foregoing paragraph.[f]

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[a] Code, Supp., pp. 199, 201, 205, 207, 454, and Laws 1905, chap. 513, sec. 12.

Laws 1905, chap. 513, providing for the just and equitable assessment of interurban railroad and street railroad property in a particular manner for state and municipal taxation, and for the collection of taxes assessed and imposed thereon, applies only to interurban railroad lines, and street railroad lines extending beyond the boundaries of a single city, whether they run to any other city or not; and so construed is not unconstitutional as an improper classification of property for taxation. State *v.* Taylor, 119 Tenn., 230 (1907).

[b] Code, Supp., pp. 201, 202, sec. 5.

[c] Ibid., pp. 203, 204, sec. 12; p. 208, sec. 7; and Laws 1905, chap. 513, sec. 12.

[d] Code, Supp., pp. 205, 206, sec. 20.

[e] Laws 1907, chap. 602, sec. 9, par. 3; and as to schedules for corporate property, etc., sec. 15.

[f] Laws 1907, chap. 602, sec. 37, par. 1 and 9.

Equalization may be made by classification of properties, according to wards, civil districts, or counties, or in such manner as will enable the board to justly equalize assessments.[a] According to an opinion of the attorney general, the state board has the power to raise the assessment of a whole county or reduce the same by a per cent of the whole, or to pass upon each piece of property specifically in raising or reducing its assessment.[b] The board also has power to obtain such evidence, information, and statistics as may be deemed material to the value and condition of properties to be equalized and may compel the attendance of witnesses and administer oaths.[c] The board may send its members to any portion of the State to obtain information and evidence, and to hear appeals from the action of local officers.[d]

The annual capital-stock tax is collected by the secretary of state.[e] The state privilege taxes on telegraph, telephone, express, sleeping-car, news, terminal, and certain warehouse companies are collected by the comptroller of the treasury.[f] All other privilege taxes as well as the ad valorem tax on merchants are collected by the county court clerks.[g] The general property tax on all other property is collected by the county trustee in each county,[h] except that the State's share of the general property tax from steam railroad, interurban and street railroad, and freight-car companies, and the distributable property of telephone and telegraph companies, is collected[i] by the comptroller of the state treasury.[j]

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[a] Laws 1907, chap. 602, sec. 37, par. 7.

[b] Ibid.; also opinions of attorney general dated August 20, 1904, and July 16, 1914.

[c] Laws 1907, chap. 602, sec. 37, par. 4.

[d] Ibid., chap. 602, sec. 37, par. 5.

[e] Ibid., chap. 434.

[f] Laws 1909, chap. 479, sec. 5.

[g] Laws 1907, chap. 602, sec. 29; Laws 1909, chap. 479, sec. 4.

[h] Laws 1907, chap. 602, sec. 47.

[i] Code Supp., p. 204.

[j] Sources of revenue in Tennessee:

Municipal and local districts.—(*a*) General property tax; (*b*) poll tax; (*c*) business taxes and licenses; (*d*) fines, fees, etc.

County.—(*a*) General property tax; (*b*) business taxes and licenses; (*c*) fines, fees, etc.

State.—(*a*) General property tax; (*b*) annual privilege tax on corporations and individuals; (*c*) annual capital stock tax on corporations; (*d*) inheritance tax; (*e*) fines, fees, etc.

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION.[a]

"All property, real, personal, or mixed, shall be taxed, but the legislature may except such as may be held by the State, by counties, cities, or towns, * * * and such as may be held and used for purposes purely religious, charitable, scientific, literary, or educational, and shall except $1,000 worth of personal property in the hands of each taxpayer, and the direct product of the soil in the hands of the producer, and his immediate vendee."[b] "No article manufactured of the produce of this State shall be taxed otherwise than to pay inspection fees."[c]

"All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the State.[d] No one species of property * * * shall be taxed higher than any other * * * of the same value, but the legislature shall have power to tax merchants, peddlers, and privileges, in such manner as they may from time to time direct. The portion of a merchant's capital used in the purchase of merchandise sold by him to nonresidents and sent beyond the State, shall not be taxed at a rate higher than the ad valorem tax on property."[b]

"The legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem."[b]

"All male citizens of this State over the age of twenty-one years, except such persons as may be exempted by law on account of age or other infirmity shall be liable to a poll tax of not less than fifty cents nor more than one dollar per annum. Nor shall any county or corporation levy a poll tax exceeding the amount levied by the State."[b]

"The General Assembly shall have power to authorize the several counties and incorporated towns in this State, to impose taxes for county and corporation purposes, respectively, in such

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[a] Except as otherwise indicated, references are to the constitution of 1870 as contained in Code of Tennessee, Annotated, R. T. Shannon, 1896.

[b] Constitution, Art. II, sec. 28.

[c] Ibid., Art. II, sec. 30.

[d] Ibid., Art. II, sec. 28.

When it is the uniform practice in the various counties of the State to assess real property at not exceeding 75 per cent of its true value, an assessment upon railroad property at its full value violates the uniformity of taxation, which is the main purpose of the constitutional provision, and will be enjoined, although this involves a violation of the letter of the state statute passed pursuant to the constitution, which requires all property to be assessed at its full value. Taylor *v.* Louisville & Nashville R. R. Co., 88 Fed. Rep., 350 (1898).

It was held that a statute which requires corporations to pay upon value of their property and their stockholders also upon the value of their shares does not bring about either double taxation or a violation of the constitutional mandate that all property shall be taxed according to value. Street Railroad Co. *v.* Morrow, 87 Tenn., 406 (1889).

manner as shall be prescribed by law; and all property shall be taxed according to its value, upon the principles established in regard to state taxation."[a]

"The legislature shall have no power to * * * pass any law granting to any individual or individuals, rights, privileges, immunities or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law."[b]

"No corporation shall be created or its powers increased or diminished by special laws but the General Assembly shall provide by general laws for the organization of all corporations * * * which laws may * * * be altered or repealed, and no such alteration or repeal shall interfere with or divest rights which have become vested."[b]

STATUTES.[c]

General Property Tax.

All property is assessable for taxation for state and local purposes, except such as is declared exempt.

Personal property is assessed annually, real estate every two years.[d] The law requires that all property be assessed at "actual cash value," which is defined as "the amount of money the property would sell for if sold at a fair, voluntary sale,"[e] but in practice it is usually assessed at from 40 to 70 per cent of such value.[f] Realty and tangible personalty are assessed in the taxing district where located,[g] intangible personalty where the corporation has its

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[a] Constitution, Art. II, sec. 29.

The legislature may itself directly impose the taxation for the uses of a municipal corporation. Luehrman *v.* Taxing District, 70 Tenn., 425 (1879).

[b] Constitution, Art. XI, sec. 8.

[c] Except as otherwise indicated, the references given herein are to the Supplement to the Code of 1896, Shannon, 1897–1903.

[d] If the assessor in making the annual assessment of personalty finds that the value of any real estate has been enhanced by permanent improvements or decreased by destruction of permanent improvements, amounting to $200 or more, the assessment of such realty is to be changed. Laws 1907, chap. 602, secs. 3, 19, 20.

[e] Laws 1907, chap. 602, sec. 4.

[f] Interview with state tax officials, 1914.

[g] Laws 1907, chap. 602, sec. 5.

The assessment of property at its actual value, though nominally authorized and required by the statutes, is excessive and void as in violation of the constitutional provision requiring uniformity in taxation when all other property in the State is assessed upon a lower basis. Railroad and Telephone Cos. *v.* Board of Equalizers, etc., 85 Fed. Rep., 302 (1897).

The actual cash value is the only practicable basis upon which taxes can be made equal and uniform, and this is clearly the constitutional requirement and legislative intent and should be the effort of the court as well as taxpayers. Carroll *v.* Alsup, 107 Tenn., 257, 292 (1901).

domicile.[a] The fact that any personalty may be deposited or out of the possession of the owner, whether in or outside the State, does not justify its omission from the tax list.[b] Mineral and timber interests and all other interests in real estate are assessed as realty.[c]

Money on hand or on deposit or invested and not otherwise taxed, notes, choses in action, accounts, mortgages, and other evidences of indebtedness,[b] are assessable as personalty without any deduction for indebtedness.[d]

Exemptions include property of the United States, and of the State and its minor subdivisions, property belonging to religious, charitable,[e] scientific, and educational institutions, all cemeteries, growing crops, the direct product of the soil of the State in the hands of the producer or his immediate vendee, and articles manufactured from the products of the State in the hands of the manufacturer;[f] personal property to the value of $1,000; and property protected by charter or contract exemption.[g]

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[a] Grundy County *v.* Tennessee Coal, etc., Co., 94 Tenn., 295 (1895).

[b] Laws 1907, chap. 602, sec. 8.

Notes have their taxable situs at the domicile of the creditor, where the debtor resides in another State. A deposit in a bank in another State, payable to a deceased resident of Tennessee, is taxable in Tennessee. McKennon *v.* McFall, 127 Tenn., 393 (1913).

[c] Laws 1907, chap. 602, sec. 5, subsec. 5.

[d] Interview, state tax officials, 1914.

[e] It was held that a certain lodge was an educational and charitable institution and that the renting of its property to others did not destroy the exemption of such property from taxation under the statutory provision that where the property of such institution is used in secular business competing with a like secular business which pays taxes to the State it shall be taxed. Cumberland Lodge No. 8 F. & A. M., *v.* Nashville, 127 Tenn., 248 (1913).

[f] Logs grown on the soil of the State, when in the hands of and upon the yard of the sawyer or mill-operating manufacturer ready to be sawed, and the lumber upon the yard cut from said logs, are articles manufactured from the produce of the State within the meaning of article 2, section 30, of the constitution of the State, exempting from taxation all articles manufactured from the produce of the State. Benedict Bros. *v.* Davidson County, 110 Tenn., 183 (1901).

Property imported from other States into Tennessee, already manufactured or awaiting manufacture, is subject to the tax laws of the State and is not exempt as interstate commerce. Darnell *v.* Memphis, 116 Tenn., 424 (1906).

Goods imported into Tennessee for the express purpose of reshipment and distribution to parties outside of the State have come "to rest" within the limits of the State and are, therefore, subject to taxation. Logan *v.* Brown, 125 Tenn., 209 (1911).

[g] Constitution, Art. II, secs. 28, 30; Laws 1907, chap. 602, secs. 1, 2, sec. 25.

Charter exemptions from taxation were granted before the adoption of the state constitution of 1870. Since that time it has not been within the power of the legislature

Capital-Stock, or Annual-Charter Tax.

Every domestic corporation and every foreign corporation qualified to transact business in the State, is required, unless exempt, to pay annually to the State for state purposes a tax in the nature of an annual-charter fee ranging from $5 to $150 according to amount of authorized capital stock.[a]

Steam, Street and Interurban Railroad, Telegraph, and Telephone Companies.

Domestic and foreign steam, street and interurban railroad, telegraph, and telephone companies, pay to the State for state purposes and locally for local purposes the general property tax on all property of railroads and on the distributable property of telegraph and telephone companies. The general property tax on the localized property of telegraph and telephone companies is paid locally for state and local purposes. In addition all these companies pay to the State for state purposes the annual capital-stock tax.[a] Telegraph and telephone companies also pay to the State, and street railroads pay locally, for state purposes certain privilege taxes.[b]

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to create exemptions other than those permitted by the state constitution, Art. 2, sec. 28. Tennessee Tax Digest and Criminal Cost Laws, 1907, p. 154.

Legislatures, not restrained by some constitutional limitation, have full power to provide, in an act creating a corporation, for an exemption of its property from taxation; and such a provision in the charter of a corporation constitutes a contract which the State may not subsequently impair. E. Tenn., V. & G. R. Co. *v.* Pickerd, 24 Fed. Rep., 614 (1885).

A state statute incorporating a railroad company which provides that the capital stock of the company shall be forever exempt from taxation and that the road with all its fixtures and appurtenances shall be exempt from taxation for the period of 20 years and no longer, exempts the road, its fixtures and appurtenances from taxation only for the term named in the act, but forever exempts shares in the capital stock of the company in the hands of the various holders. Tennessee *v.* Whitworth, 117 U. S., 129 (1886).

The charters of the earlier railroad companies incorporated by the State of Tennessee contained exemptions from taxation, but in later charters the legislature, to save repetition instead of enumerating all the powers and immunities intended to be granted, was content to refer to some earlier charter and give to the new company "all the rights, powers, and privileges," of the old. It is clear that the legislature intended to confer these "rights, powers, and privileges" as fully as if specifically repeated in the new charter; and such was the recognized construction of such charters by all the departments of the State government for more than 20 years. Louisville & N. R. Co. *v.* Gaines, 3 Fed. Rep., 266 (1880).

[a] Laws 1907, chap. 434, as amended by Laws 1913, first extra session, chap. 13.

[b] The rate of this tax for telegraph companies ranges from $20 for operating less than 100 miles, to $700 for operating 1,000 miles of wire, and in addition $20 for each 100

For assessment purposes property of these companies is classified by statute as: (*a*) Distributable property, or property having no actual situs,[a] such as rolling stock, right of way, bridges, and all other right-of-way superstructure of railroads;[b] and "lines of wire, poles, instruments, batteries, etc.," of telegraph and telephone companies;[c] and choses in action or like property; and (*b*) localized property, or property both real and personal having

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miles in excess of 1,000 and less than 6,000 miles of wire, and in addition $10 for each 100 miles in excess of 6,000 miles of wire. Laws 1909, chap. 479, sec. 5.

The rate for telephone companies ranges from 20 cents per box or instrument in counties of less than 20,000 inhabitants to 50 cents in counties of 40,000 and over; and $3 per box where tolls are charged. Ibid.

The rate for street railroad companies ranges from $3 per mile in localities of less than 10,000 inhabitants to $10 per mile in localities of 60,000 or over. Each county and municipality is authorized to levy a privilege tax on street railroad companies not exceeding that levied for state purposes. Ibid., secs. 2, 4.

[a] Code, Supp., p. 202, sec. 7.

State, county, municipal, and railroad bonds as property of a railroad company are assessable for taxation as its distributable property and not as its localized property. State *v.* Railroad, 96 Tenn., 385 (1896).

It was not intended by Acts 1897, chap. 5, secs. 6, 7, and 8, to alter, change, or modify the description or definitions of distributable and localized property as set forth in Acts 1882 (extra session), chap. 16, secs. 2 and 3. The term "roadbed," as used in secs. 2 and 3 of the act of 1882, and the terms "road," as used in sec. 6 of the act of 1897, and "roadbed," as used in sec. 7 of the act of 1897, were intended by the legislature to be used not only as synonymous and interchangeable terms, but as synonymous with the "roadway" or "right of way" of a railroad. In other words, "roadway" is practically synonymous with a "right of way," which has a twofold significance, meaning, as applied to railroads, not only the right to cross property, but also the strip which the railroad appropriates, or the space of ground allowed a railroad by law on which to construct its roadbed, which in this State can not be more than 200 feet to railroads incorporated under the general act (Acts 1875, chap. 142, sec. 6); and we understand a similar restriction is imposed upon the Nashville and Chattanooga Co. by its charter. Opinion of Attorney General Cates, as published in Tennessee Tax Digest and Criminal Cost Laws, 1907, pp. 271–272.

The legislature intended distributable property to include the roadbed or roadway, meaning the right of way, as hereinbefore defined, with the tracks thereon (both main tracks and sidings, or switches, incident thereto), the franchises, choses in action, and personal property having no actual situs; and that, when its application will result in a valuation in approximate conformity with the constitution, the mileage basis should be followed in the assessment of distributable property. In other words, the mileage basis is the rule generally applicable to such property, to be departed from only when its application would result in failure to attain a constitutional assessment, both as to value and uniformity. Ibid.

[b] Code, Supp., pp. 202, 203, secs. 6, 7, 8.

The localized property of a railroad includes not only depot buildings, but all other real estate having an actual situs, such as "office buildings" or the "yards" or "terminals" with whatever may be erected thereon, off of and not a part of the roadway. Opinion of Attorney General, as published in Tennessee Tax Digest and Criminal Cost Laws, 1907, p. 272.

[c] Code, Supp., p. 205, sec. 19.

an actual situs, such as real estate, except right of way, depots, and other buildings of railroad, telegraph, and telephone companies.[a]

The railroad commission assesses biennially both the distributable and localized property of railroads and the distributable property of telegraph and telephone companies.[b] County assessors assess the localized property of telegraph and telephone companies.[c]

The railroad commission is directed by statute to consider the values of capital stock, of corporate property, and of franchise, the amount of gross receipts, and the market value of both stocks and bonds.[d] This is done by taking the average of three results, the first of which is found by adding to the market value of the stock the market value of the bonds; the second, by capitalizing the net earnings at 10 per cent; and, the third, by using the values reported by the companies for taxation and other purposes.[e] The average thus found equals the aggregate value. From this aggregate value is deducted, in addition to an exemption of

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[a] Code, Supp., p. 202, sec. 8; p. 205, sec. 19.

[b] Ibid., pp. 199, 200, 205, secs. 1a, 2, 18.

[c] Ibid., p. 205, sec. 19.

[d] Ibid., pp. 201, 202.

The primary duty of assessors of railroad property is to ascertain its value; and while the mileage basis should be followed in the assessment of distributable property when the result will be to ascertain the value of such property, nevertheless the state board of assessors is not required to absolutely follow the mileage basis when, on account of the situation or peculiar use of the property, the application of such rule would result in discrimination or failure to attain approximately the constitutional standard in respect of value; but in such case it is the duty of the assessors, in order to ascertain the value of any property subject to assessment by them, to take into consideration all elements of value entering into the property and to that end to exercise the full power to obtain information conferred (Acts 1897, chap. 5, sec. 5) upon them, in order to enable them to better arrive at the true value of the property. Opinion of Attorney General Cates, as published in Tennessee Tax Digest and Criminal Cost Laws, 1907, p. 272.

[e] Interview with state tax officials, October, 1914.

The following description of the method of making the 1912 assessment is taken from the report of the Tennessee Railroad Commission, 1911–12, p. 16:

"The data for the assessment was gathered in the usual manner from the regular schedules sent out by the comptroller, and the answers to interrogatories prepared by the commission for the development of all information deemed necessary to determine the value of the properties in accordance with the provisions of the statutes. The president or the general manager of the company, in each instance, makes sworn answer to the interrogatories and a sworn report on the regular schedules. The commission looks to these reports and compares them with the annual reports to stockholders and with the statistics obtained from Poor's Manual. In addition to this, information is sought from every available source as to the value and the earning capacity of the properties to be assessed. In valuing localized property in the larger

$1,000,[a] the value of localized property within and without the State. The remainder, after equalization at from 60 to 70 per cent,[b] is taken as the entire value of distributable property and reduced to separate valuations per mile for each main stem, branch line, or extension of a railroad company, or for the route of a telegraph or telephone company.[c] The number of miles of railroad track or of telegraph or telephone route within the State multiplied by their respective valuations per mile equals the value of the distributable property of any such company taxable for state purposes in Tennessee, and the respective valuations per mile multiplied by the number of miles of track or route in any county or incorporated city equals the value of distributable property therein taxable for local purposes.[c]

The valuation of localized railroad property, although assessed by the railroad commission, is not apportioned on the mileage

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towns and cities, the commission calls on the mayor of the city and the judge of the county court to name a competent person to inspect the property and give sworn testimony as to its value. The commission can not possibly know the value of real estate and other localized property in the various towns and cities of the State, and as the county and city are interested in the revenues, it has been deemed proper to secure proofs of the value of the localized property in the manner above mentioned. In arriving at the value of property in the smaller towns and in the country, a copy of the list of localized property is made out from the schedules, with the valuation placed upon it by the railroad company, and sent to the county judge or chairman of the county court, with the request that he value the property and report the same to the commission. It is presumed that the county judge or chairman of the county court, being the financial agent of the county, will make a fair and equitable assessment of the localized property of the railroad company."

[a] Code, Supp., p. 202, sec. 7.

A railroad company is entitled to the exemption of $1,000 from taxation, but where it is allowed exemption upon its main stem none should be allowed it upon its extensions, branches, or other roads. Railroad *v.* Bate, 80 Tenn., 573 (1883).

[b] Interview with state tax officials, November, 1914.

[c] Code, Supp., p. 202, sec. 7; p. 205, sec. 19.

The main stem, extensions, and branches of a railroad company, as well as roads bought or leased, should be assessed separately, and the value of each should be apportioned to the several counties and towns through which they respectively run, in proportion to the relative length in the counties and towns to the whole length.

The roadbed, franchise, and superstructure are so essentially intermingled, each so indispensable to the value of the others, that they should be assessed together. Railroad *v.* Bate, 80 Tenn., 573 (1883).

The sidetracks, switches, and industrial tracks off the main right of way, but used as part of the general system, and for the same purposes as such tracks on the main right of way are used, must be assessed for taxation as "distributable property" and not as "localized trackage off the main right of way;" but all buildings, coal bins, roundhouses, machine shops, depot buildings, and other structures located on the terminal yards, must be assessed as "localized property." Nashville, C. & St. L. Ry. Co. *v.* Board of Equalization, 122 Tenn., 1 (1909).

basis, but is certified for local taxation to the counties and incorporated cities wherein the different items of such property are located. As previously stated, the localized property of telegraph and telephone companies is, like the general mass of property, assessed and taxed locally for state and local purposes.

Street and interurban railroads are assessed by the railroad commission and taxed in practically the same manner as steam railroads.[a]

Express Companies.

Express companies, domestic and foreign, are subject to a state privilege tax, ranging from $1,000 to $2,500 per annum, according to the length of route in the State.[b] They also pay the general property tax assessed and collected locally for both state and local purposes[c] and the capital-stock or annual charter tax for state purposes.[d]

Car Companies.

Sleeping-car companies pay to the State for state purposes an annual privilege tax of $3,000[b] and the capital-stock or annual charter tax. Their cars are not taxable in the State.[e]

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[a] Laws 1905, chap. 513.

The right of way of a street railroad is an easement and assessable as realty, and this easement and the franchise may be assessed together as an item separate from its other property, though it would be better to assess the company's property as a whole, including as elements of value its franchise, right of way, iron rails, ties, spikes, etc., as together constituting so much street railway. Railroad *v.* Morrow, 87 Tenn., 406 (1889).

[b] Laws 1909, chap. 479, sec. 5.

[c] Where the only statutory provision made for the assessment of the intangible property of foreign corporations doing business in this and other States, is a provision that foreign corporations having branch factories or businesses in this State shall only be assessed on the actual cash value of the corporate property, including therein the franchises and intangible values of the corporation in this State, the intangible property of a foreign express company doing business in this and other States can not be assessed and taxed thereunder, because the statute does not fix the situs of the intangible property of such foreign corporations, or provide for valuing and assessing the same for taxation. Southern Express Co. *v.* Patterson, 122 Tenn., 279 (1909).

[d] Interview with state tax officials, November, 1914.

[e] A State has power to tax property permanently located within its jurisdiction, although it be employed in interstate commerce. When the property is not continuously the same, but, as in the case of cars, is constantly changing, the State may fix the tax by an appraisement of the average number so used. But in order to exercise such power the State must, by appropriate legislation, fix a taxable situs for such movable property and provide a method and basis for its assessment. This the State has not done with respect to passenger cars owned by nonresident corporations. Tamble *v.* Pullman Co., 207 Fed. Rep., 30 (1913).

Freight-car companies pay the annual capital-stock tax. They are also subject to the general property tax payable to the State for state purposes, and payable locally for local purposes, upon the value of the average number of cars used in the State. This average number of cars and the value thereof are reported by the railroad companies. The railroad commission has authority to assess such companies and to obtain additional information as to the value of their cars.[a]

Public Utility Companies.

Electric-light, power, gas, lighting, and water companies, and all quasi-public corporations not hereinbefore treated, pay locally the general property tax for state and local purposes on all property, including franchises. In addition they pay locally for state purposes certain privilege taxes, and to the State for state purposes the capital-stock or annual charter tax.[b] Each county and municipality is authorized to levy privilege taxes not exceeding in amount that levied for state purposes.[c]

Assessments for general property taxation are made by county assessors and based on the value of property, including franchises, easements, incorporeal rights and privileges. In computing the taxable value of the property of such corporations the assessors are directed by statute to deduct from the market or actual value of the shares of stock and bonded debt the assessed value of real estate and tangible personalty. The remainder, or excess, is taxed in the taxing district where the principal office is located, or in the district or incorporated town wherein the main property is used, and the real estate and tangible personalty are taxed where located.[d]

The rates of the privilege taxes payable for state purposes range: From $25 for electric light and power companies, operating in taxing districts of 1,000, to $750 in taxing districts of

[a] Code, Supp., pp. 206–209.

[b] Laws 1907, chap. 434.

[c] Laws 1909, chap. 479, sec. 2.

[d] Laws 1907, chap. 602, sec. 5, par. 4, and sec. 21.

"The property of every street railroad, gas, and electric-light company, including their franchises used within any town, city, or taxing district where the office of the company is located outside of such incorporated city or town or taxing district, but with the main property within the city, shall be taxed in the city, town, or taxing district, as if the office was situated within the city limits, and the property, including franchises of corporations and joint-stock companies that lie wholly or mainly within any incorporated city, taxing district, or town, or whose chief business is within any incorporated city, taxing district, or town, shall be assessed for taxation in such city, taxing district, or town; provided that all realty and tangible personalty shall be taxed in the district where situated." Ibid., sec. 5, par. 4.

100,000 inhabitants or over; from $50 for gas companies, operating in taxing districts under 4,000, to $700 in taxing districts of 70,000 inhabitants or over; from $10 for lighting companies, other than gas or electric, operating in taxing districts under 20,000, to $100 in taxing districts of 50,000 inhabitants or over; from $10 for water companies, operating in taxing districts of less than 6,000, to $800 in taxing districts of 50,000 inhabitants or over.[a]

Each company of the above-named classes is required to report annually to the county assessor details as to the amount and value of its authorized and issued capital stock, outstanding indebtedness, and property of all kinds, and such other facts as may be deemed necessary by the assessor.[b]

Navigation Companies.

Navigation companies pay the annual capital-stock tax to the State for state purposes.[c]

Steamboats, ferryboats, and other water craft are subject to the general property tax assessed and collected locally for both state and local purposes, but, "in assessing steamboats and ferryboats, boats navigating within streams within or bordering on this State, the same shall only be assessed to the extent of the interest therein of any person, company, corporation, or firm residing or doing business in this State."[d]

Manufacturing, Mining, Miscellaneous, and Mercantile Corporations.

Manufacturing, mining, miscellaneous, and mercantile corporations pay locally the general property tax for state and local purposes.[e] In addition, they pay to the State for state purposes the capital-stock or annual charter tax,[c] and certain classes pay locally for state purposes privilege taxes, which in most instances

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[a] Laws 1909, chap. 479, sec. 4.

[b] Laws 1907, chap. 602, sec. 21.

[c] Ibid., chap. 434.

[d] Ibid., chap. 602, sec. 8, paragraphs 4, 10.

Steamboats belonging to a corporation and used in transporting freight and passengers between States can be taxed in the State under the laws of which the corporation is created and exists, at the home port of the company and at their situs when at rest. The State can neither impose a tax upon the capital stock of a corporation of another State, nor upon its boats engaged in interstate commerce, making only temporary landings in Tennessee; nor a privilege tax for carrying on the business of such interstate commerce. Harrell *v.* Speed, 113 Tenn., 224 (1904).

[e] Laws 1907, chap. 602, secs. 22, 23, 26.

may be levied by counties and incorporated cities in amounts not exceeding those for state purposes.[a]

Real estate and tangible personalty of these four classes of companies are assessed and taxed where located.[b] Assessments of manufacturing companies for general property taxation are made by county assessors, based on the value of property, including franchise and all other intangible values. In computing the taxable value of such corporations the assessors are directed by statute to deduct from the market or actual value of the shares of stock and bonded debt the assessed value of real estate and tangible personalty and the value of articles in possession manufactured from the produce of the State.[b] The remainder or excess is taxed in the civil district named in the charter of the company as the meeting place of the stockholders, or at the principal office or place of business if no such meeting place is so named.[c] Miscellaneous corporations are assessed in the same manner as manufacturing companies, except that no deduction for products of the soil is allowed.[d]

Assessments of mercantile companies[e] also are made by county assessors and based on the average amount of capital[f] invested in the business. This is computed by dividing by two the highest and the lowest amount of stock on hand during the year and

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[a] Laws 1909, chap. 479, sec. 2.

[b] Laws 1907, chap. 602, sec. 22,

Where the statute has not fixed the situs for the taxation of intangible personalty of a domestic corporation such personalty may be assessed at the domicile of the corporation. Grundy County *v.* Tennessee Coal, etc., Co., 94 Tenn., 295 (1895).

[c] Laws 1907, chap. 602, sec. 23.

[d] Ibid., sec. 21.

[e] Ibid., sec. 26.

A manufacturer of agricultural implements is not a dealer or merchant within the meaning of the revenue laws (Acts 1907, chap. 602, secs. 8, 26, 27, and Acts 1909, chap. 479, sec. 3). A merchant is distinguished from a manufacturer in that he sells to earn a profit and the manufacturer sells to take a profit already earned. While a manufacturer selling his own manufactured articles is a dealer, still his dealings are merely incidental to his occupation of manufacturer. It is a settled rule of interpretation in this State that statutes levying taxes or duties upon citizens will not be extended by implication beyond the clear import of the language used, nor will their operation be enlarged so as to embrace matters not specifically pointed out, although standing upon a close analogy. All questions of doubt arising upon the construction of the statute will be resolved against the Government and in favor of the citizen, because burdens are not to be imposed beyond what the statute expressly imports. Chattanooga Plow Co. *v.* Hays, 125 Tenn., 148, 155 (1911).

[f] The term "capital" as used in this connection is declared by statute to mean "the average amount of stock on hand during the year in which it is offered for sale." Laws 1907, chap. 602, sec. 26.

adding to the remainder the value of office and like fixtures. If, however, the valuation thus obtained is less than the capital invested, the tax is based on capital stock. The privilege tax paid by all mercantile companies is levied on each $100 of taxable property value at the rate of 15 cents—one-half is for state and one-half is for school purposes. Privilege taxes are also levied for dealing in certain specified commodities and for conducting various specified lines of business.[a]

Corporations of the above-named classes are required to report details with respect to capital stock, bonded debts, dividends, surplus, capital invested, receipts, etc.[b]

Stockholders and Bondholders.

Shares of stock and bonds of all corporations treated herein, except shares in manufacturing companies, are taxable to the holder.[c]

Foreign Corporations.

Foreign corporations of the classes herein treated are taxed practically upon the same basis as similar domestic corporations.[d]

III. FINANCIAL RESULTS.

Classification of Revenue.

The proportion of total state taxes for state purposes derived from corporations for 1912 was approximately 28 per cent.

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED DECEMBER 19, 1912.[e]

Total state receipts, all sources		$4,467,042.03
State taxes from corporations:		
Railroads, general property	$282,887.57	
Street railways—		
General property	47,783.75	
Mileage	3,170.17	

[a] Laws 1909, chap. 479.

[b] Laws 1907, chap. 602, secs. 21, 22, 26.

[c] Ibid., sec. 8, class 6, and sec. 22.

The legislature of the State may distinguish between the interest of a corporate body in its capital or capital stock and that of the individual shareholder as separate subjects of taxation, so that one may be taxed and the other exempt, or both governed by the same rule of taxation or exemption at its discretion. State of Tenn. *v.* Whitworth, 22 Fed. Rep., 75 (1884). Judgment affirmed 117 U. S., 129 (1886).

It was the legislative intention under Laws 1907, chap. 602, secs. 8 and 22, to assess the capital stock and corporate property of all manufacturing corporations, whether foreign or domestic, and hence the shares of such corporations so assessed are exempt from further taxation. Fertilizer Co. *v.* McFall, 128 Tenn., 645 (1912).

[d] Code, sec. 2553; Laws 1907, chap. 602, sec. 23.

[e] Report of State Comptroller, 1911–12, pp. 40–41

State taxes from corporations—Continued.		
Sleeping car companies, fixed sum	$3,000.00	
Express companies, mileage	7,500.00	
Telegraph companies, general property and mileage	4,115.58	
Telephone companies, general property and instrument	17,951.42	
Electric light and gas companies, privilege taxes	7,173.12	
News companies	3,750.00	
Building and loan associations	7,366.00	
Insurance companies, taxes and fees	503,531.73	
Tax on charters (capital stock)	88,453.05	
Fees, filing corporation reports	73,472.70	
Total ascertainable state taxes from corporations		$1,050,155.09
Other taxes:		
Liquor privilege tax	344,546.30	
Transfer tax on realty	80,828.70	
Coal-oil inspection	62,803.02	
Delinquent taxes	25,521.16	
Inheritance tax	164,961.79	
Business privilege tax	310,396.72	
General property tax	1,713,122.03	
Total state taxes not from corporations		2,702,179.72
Total taxes for state purposes, all sources		3,752,334.81
Receipts from sources other than taxes:		
State penitentiary receipts	551,464.69	
Fees from court clerks	84,042.23	
Bureau of agriculture	51,610.64	
Secretary of state, miscellaneous	21,714.50	
State prosecutions	5,401.97	
Sale old penitentiary site	473.19	
Total receipts from sources other than taxes		714,707.22
Total state receipts, all sources		4,467,042.03

IV. COMMENTS.

Historical Review.

It is worthy of note that as early as 1858 the annual gross income was one of the items to be considered in estimating the taxable value of such establishments as mills, distilleries, mines, and manufacturing concerns, as well as turnpikes, bridges, ferries, and wharves.[a] Capital loaned or deposited at interest, investments by inhabitants of the State in stocks out of the State, and "all other stocks" were taxed.[b]

[a] Code of Tenn., Meigs & Cooper, 1858, p. 179. The laws declared an exemption from taxation as to the capital or property of every incorporated company exempted from such taxation in its charter. Ibid., p. 172.

As to various charter exemptions to railroad companies, see p. 190, footnotes.

[b] Code of Tenn., Meigs & Cooper, 1858, p. 172. A few business taxes were in force, such as that on the business of banking by companies, which was 25 cents on each $100 of the capital. Ibid., p. 176.

In 1867 it was provided that sawmills and manufacturing establishments should be included in the "general assessment of property and stock at its value," and laws otherwise taxing such establishments were repealed.[a] About this time express and telegraph companies were paying annual license taxes.[b]

In 1870 merchants were required to pay an ad valorem tax upon the capital invested and a license tax based upon the amount of capital.[c] In the same year shares of stock in banks and all public bonds, or stocks, other than bonds of the United States, were declared to be taxable, together with all incomes from bonds or stocks which were exempted from taxation by the laws of the United States or the State.[d] An act of the same year exempted products of the soil of the State from taxation and articles manufactured from the produce of the State.[e] The next year a net-earnings tax was placed not only upon railroad companies but upon every other incorporated company doing business in the State, except those having charitable and religious objects.[f]

By 1883 some changes had been made in the taxation of express and telegraph companies.[g] The "actual stock" in each stock company or corporation invested in business was taxable as personal property, as well as were all bonds, stocks, and other like securities, other than such as were exempt from taxation under the national or state laws.[h]

At this time (1883) in assessing railroad companies the distinction between distributable and localized property[i] was made, and franchise was among the items to be assessed as distributable property. In fact, the method of assessing and apportioning the

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[a] Statutes of Tenn., Shankland, 1858–71, p. 198.

[b] Ibid., pp. 200 and 201. Express companies, from $500 to $1,000 per annum, dependent upon length of their lines; and telegraph companies, $500 per annum in lieu of all other state, county, or municipal taxes.

[c] Ibid., p. 206.

[d] Ibid., p. 202.

[e] Ibid., p. 208. See Constitution 1796, Art. I, sec. 27; 1834, Art. II, sec. 30; and 1870, Art. II, sec. 30, exempting such manufactured articles from taxation.

[f] Statutes of Tenn., Shankland, 1858–71, p. 210. Six mills on the dollar.

[g] Tenn. Code, 1884, Milliken & Vertrees, sec. 617. The rate on express companies was increased to an amount varying from $1,000 to $2,000 per annum, dependent upon the length of line, and telegraph companies were required to pay from $10 to $100 for each office or station, according to the population of the town.

For the various laws imposing privilege taxes on sleeping-car companies based on the number of cars used, see infra "State Privilege Tax Must Not Amount to a Tax on Interstate Commerce," p. 204.

[h] Tenn. Code, 1884, Milliken & Vertrees, sec. 634. The amount of income derivde from United States bonds and all other stocks and bonds not taxed ad valorem, was taxable.

[i] As described supra, Pt. II.

value of railroads had become practically the same as at present.[a] Telegraph companies had been placed on the same footing as railroad companies with respect to the methods of assessment for ad valorem taxation.[b]

By 1887, express, sleeping-car, telegraph, telephone, and news companies had all become subject to the payment of a privilege tax direct to the State.[c] Under the assessment law passed in that year, shareholders and bondholders were taxed, but the capital stock of the corporation was not assessed against the company.[d] Two years later, however, the method was reversed, and corporations, other than banking and quasi-public corporations, were required to pay an ad valorem tax upon the capital stock, while the shares were not assessed for taxation in the hands of the holders.[e] In the case of quasi-public corporations the method was to ascertain the value of the capital stock the same as for corporations in general, then subtract the value of the real estate assessed in wards, districts, or counties, other than those in which the corporation was located.

The last important change in the tax laws relating to corporations was the revision of the law providing for the privilege tax on sleeping-car companies, in order that it might not be regarded as a tax upon interstate commerce.[f]

Necessity for Permanent System of Revenue Laws.

In 1908 the comptroller said: "I would repeat as earnestly as I can my previous suggestion as to the wisdom, if not the absolute necessity of permanent and stable revenue laws. When those laws are constantly repealed and new laws enacted at every meeting of the general assembly, it is impossible not only for the people to understand them, but even for those charged with their ad-

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[a] Tenn. Code, 1884, Milliken & Vertrees, secs. 686 et seq. It was provided that the cash value of the individual shares should not be deducted from any valuation, and that no railroad company should have any exemption except $1,000.

[b] Ibid., secs. 709–711. The provisions of the railroad tax law of 1875 were made applicable to telegraph companies.

[c] Code, Suppl., 1885–1893, Shannon, p. 19.

[d] Acts of Tenn., 1887, chap. 2, p. 27. The market value of the shares and bonds was used. These securities were taxed as personal property for state, county, and municipal purposes.

[e] Acts of Tenn., 1889, chap. 96, p. 150. The assessment of capital stock included franchises, easements, and incorporeal rights, and corporate property. The value of the capital stock was in no case to be deemed less than the actual value of all the shares of stock, together with the actual value of the bonded indebtedness.

[f] See infra "State Privilege Tax Must Not Amount to a Tax on Interstate Commerce" p. 204.

ministration to become sufficiently familiar therewith to intelligently execute them. Furthermore, the enactment of such new laws always presents the excuse to the person who desires to evade or delay the payment of his taxes, to appeal to the courts for judicial construction thereof, thus not only hindering the State and counties in the collection of what is due them, but multiplying the work of the courts, increasing the expense of the judicial department, adding to the expense and delay of all other litigation, and what is of large consequence, running the risk of the repeal of an adequate act already declared valid by the courts, and the adoption of an invalid act instead. I would again, therefore, recommend that such improvements as may be thought advisable be enacted by amendments to the existing laws, rather than the enactment of entirely new measures."

The comptroller continues as follows:

"Under the present system of enacting a new set of revenue bills at each succeeding legislature, the officials of the State, as well as of the counties thereof, scarcely find out what the revenue laws are before a new one is promulgated, which has to run the gauntlet of executive and judicial construction every two years, at a heavy cost to the State and other litigants, and a consequent heavy loss of revenue in the meantime."[a]

State Revenue Agents an Aid to Tax Administration.

The comptroller's reports[b] show that the investigations by the state revenue agents and the mere fact that they are authorized to proceed against those who evade their taxes have caused a decided increase in the voluntary payment of taxes. The duties of these revenue agents are to have any property which may have escaped assessed for taxation. It is also their duty to collect privilege taxes from all who fail to pay them, and to audit the books of the various county officials intrusted with handling public funds. The receipts from corporations, and from other sources of taxation, have been increased through the action of these agents.

Assessment of Personal Property.

In 1908 the comptroller in his biennial report stated that Tennessee was far behind most of the other States in devising ways and means to force personal property to contribute its proper share of taxation. To remedy this situation he recommended a heavier

[a] Comptroller's Report, 1907–8, pp. 18–20.

[b] Ibid., 1907–8, pp. 16–19; 1909–10, p. 17; 1911–12, pp. 19, 20.

penalty for false swearing. He also stated that no one believed personal property in the State was bearing one-tenth of the burdens of taxation which it should bear.[a] In 1910 he repeated these recommendations and said that any measure that would force an honest statement of personal property from every property holder would add many millions of dollars to the tax rolls and would permit the tax rate to be cut in half, or at least to be largely reduced.[b] In 1912 he mentioned the injustice caused by the evasion of taxes on various forms of intangible personal property, such as notes, bonds, etc., but he also referred to the fact that it would require a change in the state constitution to permit a different rate of taxation upon the different classes of property.[c] To avoid double taxation caused by assessing a note or mortgage holder for the amount of the debt and at the same time assessing the owner of the mortgaged property for the full value of the property, the comptroller recommended that the latter be assessed only for the value of his interest in the property.[d]

Tax Assessors.

The state comptroller in his 1909–10 report[e] said that the law, passed upon his recommendation, providing for one tax assessor for each county, worked very satisfactorily. There was a marked increase in the assessable valuation of the property of the State, and the system was popular with the people of almost all the counties, but he thought the salaries allowed to the county assessors by some of the county courts had not been sufficient. He recommended that the legislature fix the salaries of the tax assessors in the various counties and stated that this would insure much greater uniformity in assessment. The comptroller again referred to this subject in his 1911–12 report as follows:

"I do not think there is a more important office in the State than that of county tax assessor, and the best men in the county should be sought to offer for the office. This will not be done unless the salary is increased, and I earnestly recommend that you pass a law fixing the salaries of the tax assessors in the various counties, and further recommend that it be made large enough for the very valuable work they have to do."[f]

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[a] Comptroller's Report, 1907–8, p. 20.
[b] Ibid, 1909–10, pp. 19, 20.
[c] Ibid., 1911–12, p. 24.
[d] Ibid., 1911–12, p. 26.
[e] Ibid., 1909–10, p. 14.
[f] Ibid., 1911–12, p. 14.

Assessment at Full Value.

In 1912 the comptroller urged the full return of all property at actual cash value, as follows:

"As long as property is taxable, and it must continue to be until our constitution is changed, I would recommend that it be assessed at its actual value instead of merely a fraction thereof, as is sometimes the case, and in order that equity should prevail and that one person not be required to pay, while another escaped, I would attempt at least to make such provision as would cause all property to be returned for taxation—personal as well as real. If this were done I have no doubt but that both the State and the counties would cut the tax rate to less than half the present rate and still have sufficient revenue to run the government."[a]

Privilege Tax on Corporations.

The views of the comptroller with respect to the taxation of corporations are shown by this recommendation:

"I would have corporations [taxed] just the same as private individuals, with the addition of an equitably adjusted corporation or privilege tax, to in some measure compensate the community for the loss of the personal liability which would attend a partnership engaged in the same business."[a]

State Privilege Tax Must Not Amount to a Tax on Interstate Commerce.

The line of demarcation between a state tax on a corporation's business carried on within the boundaries of the State and a tax on the interstate business of the corporation is clearly defined, so far as sleeping-car companies in Tennessee are concerned, in two cases decided by the United States Supreme Court. On January 17, 1910, that court rendered a decision[b] against the State of Kansas by which the State was prevented from collecting from the Western Union Telegraph Company a charter fee or tax of a certain per cent of the entire capital stock of the corporation. The opinion was delivered by Mr. Justice Harlan, and contains the following reference to the two decisions in the matter of sleeping-car companies in Tennessee:

"Nor is there any conflict between the views we have expressed and the decision in Allen *v.* Pullman Palace Car Co., 191 U. S., 171, 178, 179. One of the questions in that case was as to the

[a] Comptroller's Report, 1911–12, p. 26.
[b] W. U. Tel. Co. *v.* Kansas, 216 U. S, 1 (1910).

constitutional validity of a Tennessee statute, passed in 1887, which required every company operating sleeping cars and doing business in that State to pay, as a privilege tax, 'on each car, per annum, $500.' The Pullman Car Company operated sleeping cars in Tennessee under a contract with railroad companies traversing the State. The gross receipts of the companies from lines running into the State were, annually, about $500,000, and only about $25,000 annually from passengers carried locally in Tennessee. The cars actually used on these lines during each year numbered over one hundred. The court in that case referred to Pickard *v.* Pullman Southern Car Co., 117 U. S., 34, which involved the validity of a Tennessee act of 1877 imposing a license tax privilege of $50 annually for each sleeping car or coach used on railroads in the State, and said: 'It was held (in the Pickard case) that the tax was a burden upon interstate commerce, and void because of the exclusive power of Congress to regulate commerce between the States. Unless the statute now under consideration can be distinguished from the one then construed, the Pickard case is decisive of the present case. Both taxes were imposed under the power granted by the constitution of Tennessee to lay a privilege tax. This power is held by the supreme court of the State to give a wide range of legislative discretion. Any occupation, business, employment, or the like, affecting the public, may be classed and taxed as a privilege. Knoxville & O. R. Co. *v.* Harris, 99 Tenn., 684. In the act of 1877 the running and using of sleeping cars on railroads in the State, when the cars are not owned by the railroads upon which they are run, is declared to be a privilege. Under the act of 1887 the tax is specifically imposed upon a privilege. Under the act of 1877, the tax imposed was $50 for each car or coach used or run over the road. Under the act of 1887 each company doing business in the State is required to pay $500 per annum for the same privilege. The distinction, except in the amount of annual tax exacted, is without substantial difference. Under the earlier act the tax is required for the privilege of running and using sleeping cars on railroads not owning the cars. In the latter act it is exacted for the privilege of doing business in the State. This business consists of running sleeping cars upon the railroads not owning the cars, and is precisely the privilege to be paid for under the first act, neither more nor less. *In neither act is any distinction attempted between local or through cars or carriers of passengers.* The railroads upon which the cars are run are lines traversing the State, but not confined to its limits. The cars of the Pullman Company run into and beyond the State as well as between points within the State. The act in its terms applies to cars running through the State as well as those whose operation is wholly intrastate. It applies to all alike, and requires payment for the privilege of running the cars of the company, regardless of the fact whether used in interstate traffic or in that which is

wholly within the borders of the State.' 'The statute now under consideration requires payment of the sum exacted for the privilege of doing any business, when the principal thing to be done is interstate traffic. We are not at liberty to read into the statute terms not found therein or necessarily implied, with a view to limiting the tax to local business, which the legislature, in terms of the act impose upon the entire business of the company. We are of opinion that taxes exacted under the act of 1887 are void as an attempt by the State to impose a burden upon interstate commerce.' Again, in the same case, the court sustained the validity of a Tennessee act of 1889, which applied 'strictly to business done (by sleeping-car companies) in the transportation of passengers taken up at one point in the State and transported wholly within the State to another point therein.'"

It will be observed that, while two separate statutes of Tennessee were held to be in contravention of the commerce clause of the constitution of the United States because in neither act was any distinction attempted between local and through cars, a later statute, that of 1889, was held to be not in conflict with the constitution. The statute of 1889 provided that, in lieu of all other taxes except the ad valorem tax, sleeping-car companies should pay a tax of $3,000 per annum for one or more passengers, other than interstate, taken up at one point in the State and transported wholly within the State. The present law [a] is practically the same.

State Tax Commission Recommended.

A state tax commission was recommended by the comptroller in 1912. "Whatever changes may be made," says the report of the comptroller, "there should be created a state tax commission, upon which all interests will be represented, with power to demand and enforce the uniformity and equality of assessments, both as between the various localities and the various property interests of the State. If this uniformity and equality be secured, then the whole tax question will be solved, and not until then." [b]

Bibliography.

The following is a list of the more important publications, in addition to the constitution, the statutes, and the court reports, of value in the study of corporate taxation in Tennessee:

Report of the State Railroad Commission, 1911–12.
Reports of State Comptroller, 1907–8, 1909–10, 1911–12.
Tennessee Tax Digest and Criminal Cost Laws, 1907.

[a] Laws 1909, chap. 479, sec. 5. [b] Comptroller's Report, 1911–12, p. 27.

ALABAMA.

I. GENERAL VIEW.

Chief Features.

First. The application of the general property tax to nearly all classes of property.

Second. The taxation of certain corporations for state purposes on "franchise," both by means of license or privilege taxes, and by including "franchise or intangible value" in property assessments.

Third. The assessment of tangible property of certain corporations by an ex officio state board, of "franchise or intangible property" by an appointive state board, and of certain other property by local officials.

General Property Tax.

Domestic and foreign corporations, except car companies, pay the general property tax locally for state and local purposes. Certain operating property of railroad, telegraph, and telephone companies is assessed by the State Board of Assessment. "Franchise or intangible property" of public-service corporations is assessed by the State Tax Commission. All other property is assessed locally.

Taxes Supplemental to the General Property Tax.

In addition to the general property tax, domestic corporations, except telegraph, telephone, express, and car companies pay locally for state purposes a franchise or license tax based on paid-up capital stock, and foreign corporations, with the same exceptions, pay a similar tax based on capital employed in the State. Telegraph and telephone companies pay to the State for for state purposes a license or privilege tax based on line mileage in the State, express companies pay to the State for state purposes a license or privilege tax based on route mileage, and sleeping-car companies pay to the State for state purposes a lump-sum franchise or privilege tax in commutation of all other taxes. Local license taxes are also imposed upon certain classes of corporations.

Stockholders and Bondholders.

Shares of stock in certain domestic corporations are assessed to the holders. Shares of foreign corporations and bonds of domestic and foreign corporations are taxable to the holders under the general property tax, except that bonds secured by real estate mortgages upon which the recording tax has been paid are exempt.

Foreign Corporations.

Foreign corporations of the various classes herein considered are taxed in practically the same manner as similar domestic corporations.

Administration.

An ex officio State Board of Assessment, consisting of the governor, secretary of state, state auditor, state treasurer, and attorney general assesses certain physical property of steam railroad, telegraph, and long-distance telephone companies.[a]

A selected State Tax Commission, consisting of three members appointed by the governor for terms of four years, assesses the "franchise or intangible property" of steam and electric railroads, express, telegraph, telephone, gas, electric, water, and other public-service corporations, and has broad supervisory powers over the taxation system of the State.[b] The powers and duties given to the commission include the following: To exercise general supervision over the assessment and collection of taxes and the enforcement of the tax laws of the State, and over the several county tax assessors, tax collectors, and county equalization boards; to require county or circuit solicitors and the attorney general of the State to prosecute actions for penalties, forfeitures, impeachments, and punishments for violation of the laws of the State in respect to the assessment and collection of taxes; to summons and examine witnesses under oath in relation to tax matters, and to compel witnesses to produce documents and other evidence in their possession; to investigate tax systems of other States and to formulate and recommend legislation calculated to secure just and equal taxation; to transmit to the governor 30 days before the meeting of the legislature a written report showing statistics of taxable property with recommendations for improvements in the tax system; to set aside assessments made by local taxing authorities and to make a new assessment of any property in question; and to exercise complete

[a] Code, secs. 2133-45. [b] Ibid., secs. 2210-67; 2364-90.

powers of equalization as between counties or as between individuals.

The state board of compromise, composed of the governor, attorney general, and state auditor, has authority to adjust claims where the State is concerned. "In practice the board assumes jurisdiction of important cases whether such cases involve amounts due the State of Alabama, or from the State of Alabama to other parties. It attempts not to take jurisdiction of minor affairs." [a]

The boards of county commissioners act as boards of equalization in their respective counties. [b]

Appeals from the decisions of the State Tax Commission and the county boards of equalization may be taken to the circuit courts. [b] Local assessments are made by county assessors.

The general property tax is collected by county tax collectors. License taxes are in general paid to the probate judges of the respective counties, but the state license or privilege taxes on express, sleeping-car, telegraph, and long-distance telephone companies are paid to the state treasurer. [c]

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION. [d]

The chief constitutional provisions with reference to corporate taxation are as follows:

"All taxes levied on property in this State shall be assessed in exact proportion to the value of such property." [e]

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[a] Interview with chairman, State Tax Commission, October, 1914.

[b] Code, sec. 2148, 2229.

[c] Sources of revenue in Alabama:

Municipal and local districts.—(*a*) General property tax; (*b*) poll tax; (*c*) privilege and license taxes; (*d*) fees, fines, and forfeitures.

County.—(*a*) General property tax; (*b*) poll tax; (*c*) privilege and license taxes; (*d*) fees, fines, and forfeitures.

State.—(*a*) General property tax; (*b*) corporation franchise tax; (*c*) privilege and license taxes; (*d*) mortgage recording tax; (*e*) departmental earnings; (*f*) fees, fines, and forfeitures.

[d] Except as otherwise indicated, references are to the Constitution of Alabama, adopted in 1901, as contained in Code of Alabama, 1907, vol. 3 (Criminal Code).

[e] But no taxes shall be assessed upon any debt for rent or hire of real or personal property, while owned by the landlord or hirer during the current year of such rental or hire, if such real or personal property be assessed at its full value. (Constitution, sec. 211.)

This section does not require that all property be taxed, nor prohibit exemptions from taxation, or such classifications of property as are not arbitrary, capricious, or without semblance of reason. The legislature has full power to classify for taxation moneys and credits secured by written instruments and debts not so secured. State *v.* Alabama Fuel & Iron Co., 66 So. Rep., 169 (1914).

"The power to levy taxes shall not be delegated to individuals or private corporations or associations."[a]

"The property of private corporations, associations, and individuals of this State shall forever be taxed at the same rate; provided, this section shall not apply to institutions devoted exclusively to religious, educational, or charitable purposes."[b]

"The legislature shall not have the power to levy in any one year a greater rate of taxation than sixty-five one-hundredths of one per centum on the value of the taxable property within this State."[c]

"No county in this State shall be authorized to levy a greater rate of taxation in any one year on the value of the taxable property therein than one-half of one per centum."[d]

The rate for city, town, and village purposes is, in general, limited to one-half of one per cent for current expenses, and one per cent for debts existing December 6, 1875.[e]

"The legislature shall not have the power to require counties or other municipal corporations to pay any charges which are now payable out of the state treasury."[f]

"The legislature may levy a tax of not more than two and one-half per centum of the value of all estates, real and personal, money, public and private securities, of every kind in this State, passing from any person who may die seized and possessed thereof, or of any part of such estate, money, or securities, or interest therein, transferred by the intestate laws of this State, or by will, deed, grant, bargain, sale, or gift, made or intended to take effect in possession after death of the grantor, devisor, or donor, to any person or persons, bodies politic, or corporate, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, brothers, sisters, children, or lineal descendants of the grantor, devisor, donor, or intestate."[g]

"The legislature shall not enact any law which will permit any person, firm, corporation, or association to pay a privilege, license, or other tax to the State of Alabama, and relieve him or it from the payment of all other privilege and license taxes in the State."[h]

"The legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by corporations organ-

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[a] Constitution, sec. 212.

[b] Ibid., sec. 217.

[c] Ibid., sec. 214. See also sec. 260.

[d] Additional rates, not exceeding one-half of one per cent may be levied to pay bonds and debts for certain purposes. (Constitution, sec. 215.)

[e] Exceptions to this general provision are made in the case of certain cities. (Constitution, sec. 216.)

[f] Constitution, sec. 218.

[g] Ibid., sec. 219.

On account of the restrictions contained in this provision, the legislature of Alabama has not enacted an inheritance tax law. (Interview with state tax officials, October, 1914.)

[h] Constitution, sec. 221

ized under the laws of this State, which shall be in proportion to the amount of capital stock; but strictly benevolent, educational, or religious corporations shall not be required to pay such a tax."[a]

"All poll taxes collected in this State shall be applied to the support of the public schools in the respective counties where collected."[b]

"A special annual tax of 30 cents on each $100 of taxable property in this State, which the legislature shall levy, shall be applied to the support and maintenance of the public schools."[c]

STATUTES.[d]

General Property Tax.

Domestic and foreign corporations, unless exempt, pay the general property tax locally for state and local purposes. All taxable property is by statute made assessable at 60 per cent of its "fair and reasonable cash value,"[e] which term is defined by statute as "the value which would be realized therefrom by cash sale, but not a forced sale thereof, in such manner as such property and subjects are usually sold."[f] The State Board of Assessment[g] assesses certain physical property of railroad, telegraph, and long-distance telephone companies, and the State Tax Commission[h] assesses the "franchise or intangible property" of all public-service corporations. All other property is assessed locally.[i]

The statutory definition of "real property" includes all rights and improvements which would pass to a vendee by a conveyance of the land.[j] The term "personal property" is defined to embrace all property other than real, including moneys, credits, bonds and stocks.[j]

Real and personal property is assessed annually.[k] In addition to the constitutional rate limitations, the statute fixes the state rate at 6½ mills.[l]

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[a] Constitution, sec. 229.

[b] Ibid., sec. 259.

[c] It is also provided that the income from certain trust funds shall be applied to the support of public schools. (Constitution, sec. 260.)

[d] Except as otherwise indicated, references herein are to the Code of Alabama, 1907.

[e] Laws 1911, p. 185. The act providing that property shall be assessed on a basis of 60 per cent of "fair and reasonable cash value" is not invalid as in conflict with the state constitution. State *v.* Birmingham Southern R. Co., 182 Ala., 475 (1913).

[f] Code, sec. 2152.

[g] Ibid., secs. 2133–35.

[h] Ibid., secs. 2364–90.

[i] Ibid., sec. 2106.

[j] Ibid., sec. 2060.

[k] Ibid., sec. 2104.

[l] Ibid., sec. 2081.

Personal property of individuals as a rule is assessed in the county where the owner or agent resides. Personal property of a corporation is assessed at the principal place of business in the State, but, if the corporation has no fixed place of business in the State, it is assessed where the business is transacted.[a]

Moneys and credits are taxable, but bank deposits and credits secured by mortgages or deeds of trust upon which the recording tax has been paid are exempt.[b] Other statutory exemptions include property used for public, religious, charitable, educational, library, and cemetery purposes, property of agricultural and horticultural associations, and a limited amount of household furniture.[c] Hydroelectric power plants, shipbuilding, cotton, and certain other industries are exempt from taxation for a limited period.[d]

Franchise Tax.

Domestic and foreign corporations, except telegraph, telephone, express, and car companies, are required to pay locally for state purposes a "franchise or license tax." As applied to domestic corporations, it is based on paid-up capital stock, but as applied to foreign corporations it is based on the amount of capital employed in the State.[e] The rate of the tax, whether applied to domestic or foreign corporations, is: $1 per thousand on the first $50,000; 50 cents per thousand on the next $950,000; 25 cents per thousand on the next $4,000,000; and 10 cents per thousand on all paid-up capital stock or "capital employed" over $5,000,000. In calculating the franchise tax on foreign corporations, loans on Alabama real estate upon which the recording tax has been paid are deducted from the amount of the capital stock employed in the State. For the purpose of determining the amount of this tax, corporations are required to report annually to the probate judge facts pertinent to the assessment thereof.

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[a] Interview with state tax officials, October, 1914.

[b] Code, sec. 2082, subdiv. 7. Laws 1911, p. 172.

Held that moneys and credits payable to a foreign corporation through its Alabama general offices were subject to ad valorem taxation. State *v.* Tennessee Coal, Iron & R. Co., 66 So. Rep., 178 (1914).

[c] Code, secs. 2061, 2071. Laws 1911, p. 172.

[d] Ibid., secs. 2062–70.

[e] Laws 1911, p. 170.

The act of 1911 imposing an annual franchise tax upon the amount of paid-up capital stock of "all corporations organized in this State" is constitutional as being primarily a license tax for the continued exercise of the corporate franchise; and the law applies to a corporation chartered under the laws of two other States as well as under the laws of Alabama. Kansas City M. & B. R. Co. *v.* Stiles, 182 Ala., 138 (1913).

Steam Railroads.

Steam railroads, domestic and foreign, pay locally for state and local purposes the general property tax on all property including "franchise or intangible value." In addition, these companies pay locally for state purposes the franchise or license tax above described.[a]

Railroad property is classified for taxation purposes as, (*a*) intangible and (*b*) tangible. Intangible property, or franchise value as here described, is the difference between the entire value of the railroad property as indicated by its stock and bonds and the assessed value of its tangible property. Tangible property is subclassified as railroad track and rolling stock, which includes the right of way, rails, rolling stock, and all strictly right-of-way superstructure; and nondistributive property, which includes all other tangible property, such as stations, grounds, water tanks, etc.

Assessment of intangible property is by the State Tax Commission, of railroad track and rolling stock by the State Board of Assessment, and of nondistributive property by local officials.

The statute directing the assessment of the intangible value does not limit the State Tax Commission to any specific method of assessment,[b] but the following method recited in the statute is, in general, followed: The entire value of the property, both tangible and intangible, within and without the State, is determined by adding to the aggregate value of the stock the market or true value of the bonded indebtedness. From this is deducted the value of property not specifically used in the railroad business. That proportion of the remainder which the track mileage (or the total receipts earned) within the State bears to the total track mileage (or total receipts wherever earned) represents the value of railroad property taxable in Alabama. From the value of the property taxable in Alabama is deducted the assessed value of tangible property in the State. The remainder equals the value of intangible property or "franchise value."[c] When this valuation has been so determined it is apportioned by the tax commission on a main track mileage basis to the counties, cities, and towns through which the road operates.[d]

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[a] Laws 1911, p. 170.

[b] Code, sec. 2375.

[c] Ibid., sec. 2373. Interview with state tax officials, October, 1914.

[d] Ibid., sec. 2374.

. The combined municipal license tax and municipal tax on intangible property of street railroad companies can not exceed 2 per cent of gross earnings. Laws 1911, p. 188, sec. 36F.

The State Board of Assessment assesses "track and rolling stock." In determining the value of such property dependence is placed chiefly upon reports from the railroad companies.[a] When the valuations of track are determined for any company, it is reduced to a valuation per mile of main track and sidetrack and the number of miles of each located in any county, city, or town, multiplied by their respective valuations per mile, equals the assessable value of track therein.[b] The valuation of rolling stock is also apportioned by the State Board of Assessment to the counties, cities, and towns, usually but not always, on the main-track mileage basis.[c]

Depots, platforms, shops, station houses, water tanks, and all other railroad property not assessed by either the State Board of Assessment or the State Tax Commission are assessed locally.[d]

Each steam railroad company is required to report to the State Tax Commission all financial and other data necessary to enable the commission to arrive at a true valuation of the entire property.[e] They are also required to report to the State Board of Assessment the length and location of their lines, the number and value of locomotives and the various classes of cars, and certain other data required by the statute.[f] In addition they make returns to the various local taxing officials of counties wherein their depots and other like property is located.[g]

Telegraph and Telephone Companies.

Domestic and foreign telegraph and telephone companies pay locally the general property tax for state and local purposes on all property including "franchise or intangible value." In addition they pay to the State for state purposes certain license or privilege taxes based on line mileage.

Companies of these classes which like railroad companies operate in more than one county are assessed on intangible property by

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[a] Code, secs. 2133, 2137.

[b] Ibid., secs. 2137, 2141, 2142.

[c] Interview with state tax officials, October, 1914.

[d] Code, sec. 2145.

The State Board of Assessment assesses only such items of railroad property as are required by law to be returned to the state auditor, including main track, branches, right of way, roadbed, sidetracks, rolling stock, etc. Nashville & Decatur R. Co. *v.* State, 129 Ala., 142 (1900).

[e] Code, secs. 2366–2369.

[f] Ibid., sec. 2133.

[g] Ibid., sec. 2145.

the State Tax Commission,[a] on operating property by the State Board of Assessment,[b] and on property not directly used in the business by local assessors. All property of such companies operating within a single county, however, is assessed locally.[c] In assessing the intangible or franchise value of these classes of corporations, the State Tax Commission is authorized to adopt the method described under railroads, or any other method which will result in equitable taxation.[d] Apportionment of franchise or intangible value to counties, cities, and towns is made by the State Tax Commission on a line mileage basis.[e]

After determining the value of poles, wires, and instruments, the State Board of Assessment reduces the value of the first two items to a valuation per mile. The number of miles of poles or of wires in any county, city, or town, multiplied by their respective valuation per mile, equals the assessable value of such property therein. The valuation of instruments is assigned directly to the county and city where located.[f]

Each company of the above-named classes operating in more than one county is required to report annually to the State Tax Commission and to the State Board of Assessment details with respect to the location and value of its property, capitalization, bonded indebtedness, and such other information as may be necessary for a just and equitable valuation by these boards.[g] These companies also report to the state auditor data which forms the basis of the payment of the state privilege tax.[h] Such companies operating wholly within a single county are required to report to the county assessing officer.[c]

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[a] Code, secs. 2364–2390.

[b] Ibid., secs. 2141–2145.

[c] Ibid., secs. 2115, 2145.

[d] Ibid., secs. 2371, 2372, 2373, 2375.

[e] Ibid., sec. 2374.

[f] The assessment of a certain telegraph and telephone company, as apportioned by the State Board of Assessment to Colbert County, is given in the Annual Report of State Auditor for 1913 (p. 631) as follows:

Colbert County:	
19.19 miles poles at $90 per mile	1,727.10
347.72 miles wire at $30 per mile	10,431.60
Value of instruments	35.00
	12,193.70

[g] Code, secs. 2143, 2366–2369.

[h] Laws 1911, p. 159.

The privilege or license tax paid by telegraph and telephone companies to the State for state purposes is as follows:[a]

Companies whose lines within the State do not exceed 150 miles are required to pay at the rate of $1 per mile, and companies whose lines exceed 150 miles in the State are required to pay $500, plus $1 per mile for each mile of line in excess of 150 miles.

Express Companies.

Domestic and foreign express companies pay the general property tax locally for state and local purposes on tangible [b] and intangible [c] property. In addition, they pay to the State for state purposes a lump-sum license or privilege tax. Cities may also levy for city purposes an annual privilege or license tax based on the population of the several cities in which the companies operate.[d]

The tangible property of express companies is assessed by county assessors and the "franchise or intangible property" is assessed and apportioned by the State Tax Commission in practically the same manner employed by the commission in assessing and apportioning similar property of steam railroads. The license or privilege tax for state purposes is $4,000 per year, modified as follows: Express companies operating on less than 50 miles of railroad in the State are required to pay only $250; companies operating on more than 50 miles but less than 200, pay $1,000; and those operating on 200 to 500 miles, pay $2,000. The annual privilege or license tax, which cities may levy for local purposes, varies from $2.50 for municipalities having a population of 500 or less, to $500 for municipalities having a population of 30,000 or over.[e]

Sleeping-Car Companies.

Domestic and foreign sleeping-car companies pay to the State for state purposes a lump-sum franchise or privilege tax of $5,500 per annum in commutation of all other taxes, state or local,

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[a] Laws 1911, p. 159.

[b] Code, sec. 2145.

[c] Ibid., secs. 2364–2390.

[d] Laws 1911, p. 161.

[e] In municipalities of 500 population or less, the privilege or license tax for municipal purposes may be $2.50; 500 to 1,000 population, $15; 1,000 to 2,000 population, $25; 2,000 to 3,000 population, $35; 3,000 to 4,000 population, $45; 4,000 to 5,000 population, $75; 5,000 to 10,000 population, $125; 10,000 to 15,000 population, $175; 15,000 to 20,000 population, $200; 20,000 to 25,000 population, $250; 25,000 to 30,000 population, $300; 30,000 or over, $500. (Laws 1911, p. 161.)

except a small license or privilege tax, not exceeding $10, which municipalities, having the proper authority under the law, may impose.[a]

Street Railway, Gas, Water, Electric, and Power Companies.

Domestic and foreign street and electric railway, gas, water, electric, and power companies pay the general property tax locally for state and local purposes on tangible and intangible property. In addition, domestic corporations pay locally for state purposes an annual franchise or license tax based on paid-up capital stock, and foreign companies pay a similar tax based on capital employed in the State.[b] Domestic and foreign companies pay also locally for state purposes an annual license tax ranging from $15 in cities of less than 5,000 population to $200 in cities of 20,000 population or more.[c] Counties are permitted to levy, for county purposes, license taxes not exceeding 50 per cent of the amount of the state tax.[d] The tangible property of companies of this class is assessed by county assessors,[e] and the "franchise or intangible property" is assessed by the State Tax Commission[f] by practically the same method it employs in assessing railroads.

To encourage the development of unused water powers, newly constructed hydroelectric power plants are exempt from taxation for a period of ten years from the beginning of construction.[g]

Each company of the above-named classes is required to report to the State Tax Commission and to the assessors of the counties wherein they operate.[h]

Manufacturing, Mercantile, Mining, and Miscellaneous Companies.

Domestic and foreign manufacturing, mercantile, mining, and miscellaneous corporations are taxed locally for state and local

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[a] Laws 1911, p. 162.

[b] Ibid., p. 170.

[c] Code, sec. 2361, subdiv. 35.

In municipalities of 20,000 population or more, the license tax is $200; 10,000 to 20,000 population, $50; 5,000 to 10,000 population, $25; less than 5,000 population, $15.

[d] Code, sec. 2362; Laws 1911, p. 184, sec. 33F.

The combined municipal license tax and municipal tax on intangible property of gas, water, and electric light companies can not exceed 2 per cent of gross earnings. Laws 1911, p. 188, sec. 36F.

[e] Code, secs. 2108–2111.

[f] Ibid., secs. 2364–2390.

[g] Ibid., sec. 2069.

[h] Ibid., secs. 2108–2111, 2366–2369.

purposes on the value of their tangible property.[a] In addition, domestic corporations of these classes pay locally for state purposes an annual franchise or license tax based on paid-up capital stock, and foreign companies pay a similar tax based on capital employed in the State.[b]

The real and personal property of such corporations is assessed locally and the officers of the corporation are required to list all taxable property belonging to the corporation with the county assessor of the county in which the business is carried on.[a]

Stocks of goods are assessed on the average amount on hand during the preceding year.[c]

To encourage the manufacture of cotton, wool, and lime nitrogen, plants used in such industries are exempt from taxation for a limited period.[d] Breweries are required to pay locally for state purposes an annual license tax of $1,500.[e]

Stockholders and Bondholders.

Shares of stock in domestic corporations, except shares in corporations which pay a tax on franchise or intangible property, are assessed to the holders at the principal place of business of the corporation in the State on the value of such shares in excess of the assessed value of the real and personal property of the corporation. Such stock is assessable by county assessors and the tax is payable locally by the corporation, which may charge same to the accounts of the shareholders.[f] Shares of foreign corporations[g] and bonds of domestic and foreign corporations, except that bonds

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[a] Laws, 1911, p. 166.

[b] Ibid., p. 170.

[c] Code, sec. 2082, subdivision 4.

[d] Ibid., secs. 2062, 2070.

[e] Laws 1911, p. 168.

[f] Code, sec. 2082, subdiv. 9.

The only deduction authorized by the statute is the amount for which the property of the corporation is assessed for taxation, and not the value of such property as may have been exempt from taxation in favor of the corporation. Amounts on deposit and amounts invested in Alabama bonds, while exempt to the corporation, are not deductible in arriving at the assessable value of the shares of stock. Ex parte State, 66 So. Rep., 1 (1914).

[g] Provisions of Alabama code taxing stocks of railroads incorporated and operating exclusively in other States, held by citizens of Alabama are not unconstitutional under the Fourteenth Amendment, because no similar tax is imposed on the stock of domestic railroads or of foreign railroads doing business in Alabama; the property of the former class of railroads being untaxed, and that of the latter two classes being taxed, by the State. Kidd *v.* Alabama, 188 U. S., 730 (1903).

secured by real estate mortgages upon which the recording tax has been paid, are taxable to the holders thereof.[a]

Foreign Corporations.

Foreign corporations of the classes herein considered are, with the exceptions above noted, taxed in practically the same manner as similar domestic corporations.

III. FINANCIAL RESULTS

Classification of Revenue.

The proportion of total state taxes for state purposes derived from corporations for 1912 was approximately 31 per cent.

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED SEPTEMBER 30, 1912.[b]

Total state receipts, all sources		$6,046,600.28
State taxes from corporations:		
Railroads, steam and electric, general property[c]	$647,824.80	
Sleeping car, lump sum	5,500.00	
Express companies—		
General property[c]	4,406.92	
Mileage	5,500.00	
Telegraph companies—		
General property[c]	25,922.73	
Mileage	5,571.75	
Telephone companies—		
General property[c]	21,871.38	
Mileage and fixed amount	5,288.66	
Gas, electric light, and water companies—		
General property[c]	112,234.79	
Privilege taxes	3,386.26	
Steamboat companies, general property[c]	6,667.08	
Oil companies, privilege tax	4,513.79	
Banks, general property tax[c]	87,526.64	
Banks, examination fees	9,060.00	
Building and loan associations, licenses	1,822.38	
Insurance companies, taxes and fees	252,654.06	
Corporation capital-stock tax	119,280.89	
Corporation fees	85,659.14	
Total ascertainable state taxes from corporations		1,404,691.27

[a] Code, sec. 2082, subdiv. 11.

The revenue law providing for a tax for recording mortgages, deeds of trust, or written contracts of conditional sale, and declaring that no ad valorem tax shall be collected on any such instrument or on the debts secured thereby after such tax has been paid, is constitutional. State *v.* Alabama Fuel & Iron Co., 66 So. Rep., 169 (1914).

[b] From Annual Report State Auditor, 1912.

[c] Estimated by applying the state rate of 0.0065 to the property values found in Report of State Auditor, 1912, p. 484, and Report of State Tax Commission, 1911, p. 6.

Other taxes:		
General property tax[a] (less $906,454.34 above estimated)	$2,487,819.58	
Poll tax	179,790.23	
Miscellaneous licenses	172,707.73	
Liquor licenses, etc	127,716.66	
Tax on record mortgages	107,326.43	
Motor vehicles	40,054.10	
Game and fish protection fund	10,262.19	
Total state taxes not from corporations		$3,125,676.92
Total taxes for state purposes, all sources		4,530,368.19
Receipts from sources other than taxes:		
Convict department	1,074,221.28	
Sale of tags and stamps	206,550.24	
Sale of lands, etc	78,854.70	
Departmental and court fees, etc	61,054.81	
United States aid to colleges	50,000.00	
Registration of brands	10,062.04	
Court costs	6,728.47	
Sale of laws, acts, etc	6,003.75	
Miscellaneous receipts	22,756.80	
Total receipts from sources other than taxes		1,516,232.09
Total state receipts, all sources		6,046,600.28

IV. COMMENTS.

Historical.

When Alabama became a State in 1819, there was practically no special assessment for taxation of the property of corporations. In fact, this is a matter which has been given attention by the legislature only in recent years.

Pursuant to a series of acts dating from 1823 to 1826, the State invested eight millions of dollars in bank stock.[b] The earnings from these investments for a time defrayed the greater part of the State's expenses, and as a consequence most of the direct taxes were suspended in 1836. During the financial depression of 1837, however, banks whose stock the State held became involved, and in 1842 were placed in liquidation. During the interim the State, by reason of the depreciation in the value of these stocks, became financially embarrassed, and heavy taxation and the sale of state bonds failed to provide sufficient revenue to defray the State's indebtedness until after the appointment of a commission, authorized in 1874[c] to liquidate and adjust the claims against the State.

[a] Part of this comes from local taxation of corporations, but it is practically impossible to ascertain the amount thus received, except the amounts above estimated, which are not included in this item.

[b] "Repudiation of State Debts," by William A. Scott, 1893, p. 54.

[c] Laws 1874, p. 102.

In 1897 a tax commissioner was appointed to supervise the administration of the tax laws of the State, and all corporations, domestic and foreign, not subject to a license tax were required to pay a graduated supplemental tax based on paid-up capital stock, with rates varying from $10 to $500.[a]

An act of 1900 authorized the refund of money collected under an act of 1899 imposing certain license taxes which was declared unconstitutional. The authorization of this refund extended only to the amount collected under the unconstitutional act which was in excess of the amount as fixed in the Code of 1896 or other existing law.[b] A new act covering this subject was passed in 1901.[c] In the same year a new constitution was adopted which necessitated several changes in the revenue law, and in 1903 the statutes were revised to conform to the new constitutional requirements.

A legislative act of 1907[d] abolished the office of tax commissioner and transferred the duties attaching thereto to the present State Tax Commission, which it created. This commission was given broad supervisory powers over the taxation system of the State, and among the duties assigned to it was the assessment of the intangible values of public-service corporations.[e]

Foreign corporations which for ten years previous had been subject to a tax on the full amount of paid-up capital stock were in 1907 made taxable on the amount of capital employed in the State,[f] but the rates were higher than those imposed on domestic corporations.[g] The present law has been described under the head of "Franchise tax."[h]

Fractional Assessment.

The report of the State Tax Commission for 1911 states that notwithstanding the fact that the legal basis of valuation has been changed to 60 per cent from 100 per cent, the assessments, largely through the efforts of the commission, have been greatly increased. According to its 1912 report, the commission suc-

[a] Code 1896, sec. 4122, subdiv. 55.

[b] Laws 1900–1901, p. 669.

[c] Ibid., p. 2598.

[d] Laws 1907, p. 425.

[e] Ibid., p. 342.

[f] Code, secs. 2391–2400.

This tax was held invalid as to a corporation already within the State, as being a new and additional tax which was not imposed on domestic corporations. Southern Railway Co. *v.* Greene, 216 U. S., 400 (1910).

[g] Code, sec. 2361, subdiv. 26.

[h] Supra, p. 212.

ceeded in obtaining in that year the second largest increase in assessed values ever made in any one year in the State, namely, about $62,000,000, or over 11 per cent.[a]

Centralization.

Alabama has, in recent years, acquired a high degree of centralization as to the assessment of public-service corporations, but complaint has been made by the State Tax Commission that it has been practically impossible to obtain the desired degree of cooperation of local tax officials toward the assessment of property at the proportion of actual value required by law. The commission states in its 1912 report[a] that opposition to full legal assessments is fostered largely by those who are not paying their fair share of taxes and who are trying to obstruct the efforts of the commission in making a just assessment against their particular properties.

Bibliography.

The following is a list of the more important publications, in addition to the constitution, the statutes, and the court reports of value in the study of corporate taxation in Alabama:

Annual Reports of the State Tax Commissioner, 1904–1906.
Annual Reports of State Tax Commission, 1907–1913.
Annual Reports of State Auditor.
"The Repudiation of State Debts," by William A. Scott, 1893.

[a] Report of State Tax Commission, 1912, p. 4.

MISSISSIPPI.

I. GENERAL VIEW.

Chief Features.

First. The application of the general property tax to practically all classes of property.

Second. The imposition of state privilege taxes on practically every class of corporations, in addition to general property taxation.

Third. The taxation, in addition to all other taxes, of property, acreage, production and privileges, in certain counties for levee purposes.

General Property Tax.

All property, whether belonging to corporations or to individuals, unless exempt, is subject to the general property tax paid locally for state and local purposes. The property of railroad, express, sleeping-car, telegraph, and telephone companies used in their business is assessed by the railroad commission. All other taxable property is assessed by the local assessors.

Taxes Supplemental to the General Property Tax.

State privilege taxes of various kinds are imposed on practically all classes of corporations which, except as applied to freight-line companies, are in addition to the general property tax. Municipalities may levy one-half the amounts imposed for state purposes, except that license taxes may not be imposed for municipal purposes on telegraph, express, and sleeping-car companies.

Stockholders and Bondholders.

Shares of stock of corporations whose property is taxed in the State are not taxable to holders thereof. Shares of stock of other corporations are taxable to the holders. Bonds of corporations bearing a rate of interest not greater than 6 per cent are exempt.

Foreign Corporations.

Foreign corporations of the classes herein treated are subject to the same method and manner of taxation as similar domestic corporations.

Administration.

The railroad commission, acting ex officio in matters of taxation, assesses the property of steam railroads, express, sleeping-car, telegraph, and telephone companies, and apportions the assessments among the counties.[a] This commission is composed of three members, one from each supreme court district, being elected by the State at large for a term of four years.[b] The county assessor assesses all other taxable property. The county board of supervisors equalizes assessments within the county by increasing or diminishing the valuation of any property, except that assessed by the railroad commission.[c] The board also has power to order a reassessment of property.[d]

General property taxes for state and county purposes are paid to the tax collectors of the respective counties.[e] The classification of railroads for the payment of privilege taxes is made by the railroad commission. The state privilege taxes on railroads, express, sleeping-car, and telegraph companies are paid to the auditor of public accounts.[f] Other state privilege taxes are paid to the tax collector of the county. The state revenue agent has general charge of the collection of delinquent state, county, municipal, or levee taxes [g] and the assessment of omitted property of corporations and individuals.[h]

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION.[i]

"Taxation shall be uniform and equal throughout the State. Property shall be taxed in proportion to its value. * * * Property shall be assessed for taxes under general laws, and by

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[a] Code, secs. 4382, as amended Laws 1914, chap. 247; 4387; 4392.

[b] Ibid., sec. 4826.

[c] Ibid., sec. 4297.

[d] Ibid., secs. 4294, 4299.

[e] Ibid., secs. 4314, 4394.

[f] Ibid., sec. 3894, as amended, Laws 1914, chap. 114.

[g] Ibid., secs. 4738, 4740.

[h] Sources of revenue in Mississippi:

Municipal and local districts.—(*a*) General property tax; (*b*) poll tax; (*c*) privilege taxes; (*d*) fees, fines, and forfeitures.

County.—(*a*) General property tax; (*b*) poll tax; (*c*) privilege taxes; (*d*) fees, fines, and forfeitures.

State.—(*a*) General property tax; (*b*) privilege taxes; (*c*) income tax; (*d*) fees, fines and forfeitures.

[i] Except as otherwise indicated, references are to the constitution of the State as contained in the Mississippi Code of 1906.

uniform rules, according to its true value. But the legislature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particular species of property belonging to persons, corporations, or associations not situated wholly in one county. But all such property shall be assessed at its true value, and no county shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county." [a]

"The property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as the property of individuals, but the legislature may provide for the taxation of banks and banking capital, by taxing the shares * * * " [b]

"All existing charters or grants of corporate franchise under which organizations have not in good faith taken place at the adoption of this constitution shall be subject to the provisions of this article [secs. 178–200]; and all such charters under which organizations shall not take place in good faith and business be commenced within one year from the adoption of this constitution shall thereafter have no validity. * * *" [c]

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[a] Constitution, sec. 112.

The provision that no county shall be denied the right to levy county or special taxes, etc., applies only to assessments of railroads or other like property not situated wholly in one county. Brennan *v.* Mississippi, etc., Co., 70 Miss., 531 (1893).

The section is the only constitutional limitation on the power of the legislature to exempt property from county and municipal taxation. Ibid.

A statute providing for the assessment of railroads for back taxes by the state railroad commission, without appeal, does not violate the uniformity and equality rule under this section, nor is it a deprivation of property without due process of law, although other taxpayers may, under general laws, appeal from the tribunal fixing their taxes. Yazoo, etc., R. R. Co. *v.* Adams, 77 Miss., 764 (1900).

Provision is made by law for the assessment of railroad companies by the railroad commission, and municipalities are not authorized to make independent assessments, though operating under charters granted before the enactment of section 112, of the constitution of 1890. Yazoo, etc., R. R. Co. *v.* City of Vicksburg, 95 Miss., 701 (1909).

[b] Constitution, sec. 181.

Section 181, enacting that the property of corporations shall be taxed like that of individuals, must be construed with section 112, providing for special modes of assessment for corporations, and section 4267 of the Code is not invalid; and where the aggregate market value of the stock of the corporation exceeds the value of the real and personal property, a tax on the difference is a tax on the value of the franchise, and is proper. People's Warehouse Co. *v.* Yazoo City, 97 Miss., 500 (1910).

[c] Constitution, sec. 180.

An exemption from taxation contained in a charter of a railroad company which afterwards loses its corporate existence by consolidation with another company was cut off by the section, notwithstanding the charter provided that the exemptions

"The power to tax corporations and their property shall never be surrendered or abridged by any contract or grant to which the State or any political subdivision thereof may be a party, except that the legislature may grant exemption from taxation in the encouragement of manufacturers and other new enterprises of public utility extending for a period not exceeding five years, the time of such exemptions to commence from date of charter, if to a corporation; and if to an individual enterprise, then from the commencement of work; but when the legislature grants such exemptions for a period of five years or less, it shall be done by general laws, which shall distinctly enumerate the classes of manufacturers and other new enterprises of public utility entitled to such exemptions, and shall prescribe the mode and manner in which the right to such exemptions shall be determined."[a]

"Provision shall be made by general laws whereby cities and towns may be authorized to aid and encourage the establishment of manufactories, gas works, waterworks, and other enterprises of public utility other than railroads, within the limits of said cities or towns, by exempting all property used for such purposes from municipal taxation for a period not longer than ten years."[b]

"Corporations shall be formed under general laws only. * * * In assessing for taxation the property and franchises of corporations having charters for a longer period than ninety-nine years, the increased value of such property and franchises arising from such longer duration of their charters shall be considered and assessed; but any such corporation shall have the right to surrender the excess over ninety-nine years of its charter."[c]

"No obligation or liability of any person, association, or corporation held or owned by this State, or levee board, or any county, city, or town thereof, shall ever be remitted, released, or postponed, or in any way diminished by the legislature, nor shall such liability or obligation be extinguished except by payment thereof into the proper treasury."[d]

"No revenue bill, or any bill providing for assessments of property for taxation, shall become a law except by a vote of at least three-fifths of the members of each house present and voting."[e]

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should pass to the consolidated company. Adams *v.* Yazoo, etc., R. R. Co., 77 Miss., 194 (1898); affirmed in Yazoo, etc., R. R. Co. *v.* Adams, 180 U. S., 1 (1901).

[a] Constitution, sec. 182.

The statute exempting from taxation a class of factories being or about to be established, though the company was chartered before the statute, is constitutional, and does not violate section 182 of the constitution. Adams *v.* Winona Cotton Mills, 92 Miss., 743 (1908).

[b] Constitution, sec. 192. Code, sec. 4251, as amended Laws 1912, chap. 241.

[c] Ibid., sec. 178.

[d] Ibid., sec. 100.

It is beyond the power of a municipality, under the section, to remit or release liability to it for due and unpaid taxes. Morris, etc., Co. *v.* Adams, 75 Miss., 410 (1897).

[e] Constitution, sec. 70.

The section is binding as a matter of procedure on the legislature, but its disregard is beyond the control of the courts. Hunt *v.* Wright, 70 Miss., 298 (1892).

"Provision shall be made by general laws to prevent the abuse by cities, towns, and other municipal corporations of their powers of assessment, taxation, borrowing money, and contracting debts."[a]

The legislature is prohibited from passing local, private, or special laws exempting property from taxation or from levy or sale.[b]

A poll tax of two dollars, in aid of the common schools and for no other purpose, is imposed on males between twenty-one and sixty years of age.[c]

"The legislature shall impose for levee purposes, in addition to the levee taxes heretofore levied or authorized by law, a uniform tax of not less than two nor more than five cents an acre per annum upon every acre of land now or hereafter embraced within the limits of either or both of said levee districts."[d]

"The legislature shall have full power to provide such system of taxation for said levee districts as it shall, from time to time, deem wise and proper."[e]

"The rolling stock belonging to any railroad company * * * shall be considered personal property."[f]

"Express, telegraph, telephone, and sleeping-car companies are declared common carriers in their respective lines of business, and subject to liability as such."[g]

The sheriff, assessor, and other county officers are selected in the manner provided by law for each county.[h]

The governor has power, and it is made his duty, to suspend alleged defaulting tax collectors pending investigation, and make temporary appointments while investigations are being made.[i]

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[a] Constitution, sec. 80.

[b] Ibid., sec. 90.

[c] Ibid., sec. 243.

[d] Ibid., sec. 236. (Referring to the Mississippi and the Yazoo-Mississippi Delta levee districts.)

[e] Ibid., sec. 237.

[f] Ibid., sec. 185.

[g] Ibid., sec. 195.

The section does not relieve a sleeping-car company from liability to a privilege tax, even if its local business is done at a loss and the tax has to be paid from its interstate business. Pullman Co. *v.* Adams, 78 Miss., 814 (1901).

If this section should be read as imposing an obligation to take local passengers, the question might be whether the section is valid. Pullman Co. *v.* Adams, 189 U. S., 420 (1903).

[h] Constitution, sec. 138. The term "sheriff" in this State implies "tax collector." Byrne *v.* State, 50 Miss., 688 (1874); French *v.* State, 52 Miss., 759 (1875).

[i] Constitution, sec. 125.

STATUTES.[a]

General Property Tax.

Domestic and foreign corporations, except freight-car companies, pay the general property tax locally for state and local purposes.

The statute requires the assessment of all property at cash value, namely, the amount which the owner would accept for it, if disposed to sell.[b] In practice, property is assessed at about 50 per cent of cash value.[c] In addition to the general property tax for state and usual local purposes, levee districts are permitted by statute to levy property and other taxes for levee purposes.[d]

Operating property of railroad, telegraph, telephone, express, and sleeping-car companies is assessed by the state railroad commission.[e] All other taxable property is assessed by local assessors.[f]

The statutory definition of land includes "all corporeal hereditaments whatever, and any interest therein, whether an estate for years, or a different estate."[g] The statutory definition of personal property includes "goods, chattels, effects, and evidences of rights of action, and all written instruments by which any pecuniary obligation, or any right, title, or interest in any real or personal estate, shall be created, acknowledged, transferred, incurred, defeated, discharged, or diminished."[h]

Real estate is assessed biennially and personal property annually.[i]

Real estate and tangible personal property are assessed where situated, and intangible property where the owner resides. The domicile of a corporation is the location of its principal office or

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[a] Except as otherwise indicated, references herein are to the Mississippi Code of 1906, cited as "Code."

[b] Code, secs. 4268, 4281.

A foreign corporation, purchasing a turpentine lease in the State and establishing a commissary for its customers at which it received turpentine and rosin, held to have "money employed in business" to the amount evidenced by the value of the lease, and to be taxable on such amount. Union Naval Stores *v.* Adams, 104 Miss., 299 (1913).

[c] Interview with state tax officials, November, 1914.

[d] Laws 1914, chap. 280.

[e] Code, sec. 4382, as amended, Laws 1914, chap. 247; 4387; 4392.

[f] Ibid., secs. 4263, 4267, 4283.

[g] Ibid., sec. 1584.

[h] Ibid., sec. 1591.

[i] Ibid., secs. 4263, 4280.

place of business.[a] In valuing real estate, its proximity to transportation facilities and communities is taken into consideration.[b]

Money on hand or on deposit is taxable. Credits are not taxable unless they bear a rate of interest higher than 6 per cent.[c]

In addition to the usual exemption of property used for religious, charitable, school, library, cemetery, and public purposes, farm products in the hands of producer, farming implements in use, mechanics' tools, and certain manufacturing plants and machinery are exempt from taxation.[d]

Railroad, Express, Sleeping-Car, Telegraph, and Telephone Companies.

Domestic and foreign railroad, express, sleeping-car, telegraph, and telephone companies pay the general property tax locally for state and local purposes. In addition, they pay certain privilege taxes for state purposes.

All property of railroads, except real estate not used in the railroad business, is assessed by the railroad commission. Real estate not used in the railroad business is assessed locally.[e] Collection of privilege taxes is made by the State, except those from telephone companies which are collected locally.

The exact method of determining the valuations of railroad property is not fully revealed by the railroad commission. In general, however, such valuations are based largely on reports by the railroads to the commission. These reports show the value per mile of track, the value of franchise, and rolling stock, and separately the value and location of other items of railroad property, such as depots, warehouses, etc. After considering the valuations thus returned by the companies the commission agrees on a separate valuation per mile for the first and second main tracks and sidetracks of through lines, branches, or divisions of each railroad operating in the State. This valuation per mile includes the value of franchise, rolling stock, roadbed, rails, bridges and other strictly right-of-way superstructure, and ferries. The number of miles of first or second main tracks or sidetracks located in any county, city, or town, multiplied by their respective valuations per mile, equals

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[a] Code, secs. 4258, 4259.

[b] Ibid., sec. 4281.

[c] Ibid., sec. 4270, as amended, Laws 1912, chap. 90.

[d] Ibid., sec. 4251, as amended, Laws 1912, chap. 241; Laws 1912, chaps. 115, 118.

[e] Ibid., sec. 4387.

No city, town, or village can make any independent assessment of its own against steam railroad property. Railroad Co. *v.* Vicksburg, 95 Miss., 701 (1909).

the total valuation of track apportionable thereto. The valuations of the various items of other property, such as depots and shops and the real estate used in connection therewith, are not apportionable, but are assigned directly to the county, city, or town where located.[a]

Telegraph property is classified as "poles" and "wire,"[b] and telephone property as "main line" and "side line," which includes in each the value of both telephone poles and wires. Separate valuations per mile are determined for each such class of telegraph and telephone property, and the number of miles of each class located in any county, city, or town, multiplied by its respective valuation per mile, equals the valuation apportionable thereto.[c] A further classification is made of nondistributive telephone property, namely, "telephone instruments," "switchboards," and "other property." These items are separately assessed and the valuation assigned directly to the county, city, or town where located.[c]

Passenger-car companies are assessed on the proportionate value of cars used in the State. This valuation is based on route mileage of railroads over which the cars travel in the State, and apportioned to the counties and minor taxing districts on the mileage basis.[d]

The property of express companies, consisting of horses, wagons, office furniture, etc., is assessed by the commission, and the valuations are assigned directly to the counties, cities, or towns wherein the property is located.

Each company of the above-named classes is required to report annually such detailed information as is necessary for the commission to make a fair valuation of the property.[e]

The annual privilege taxes paid by railroad companies to the State for state purposes are based on a classification of railroads, which the statute directs the commission to make according to charters and gross earnings of the companies. In compliance with this, the railroads are grouped under four classes and, except in levee districts, are taxed at the following rates per mile of main line: Railroads of the first class pay $45, of the second class $25,

[a] Code, secs. 4387, 4389, 4390. Interview with state tax officials, November, 1914.

[b] A mile of line having four wires would be counted as 4 miles of wire. Interview with state tax officials, November, 1914.

[c] Copy of assessment sheets as used by Railroad Commission, 1914.

[d] Interview with state tax officials, November, 1914.

[e] Code, sec. 4382, as amended, Laws 1914, chap. 247; sec. 4393.

of the third class $10, and of the fourth class (narrow gauge railroads) $2.50 per mile of main line. In levee districts they pay the State for the mileage within the district $20, $15, $7.50, and $2.50, respectively.[a]

The rate of the privilege tax on express companies is $250, plus $4 per mile of railroad main track, for operating over first-class roads; and $250, plus $2 per mile, for operating over second or third class railroads.[b]

The rate of the privilege tax on sleeping-car companies is $2.50 per mile of railroad main track for operating over first-class railroads, and $1.50 per mile for operating over second or third class railroads.[c]

The privilege taxes paid by telegraph companies is $250 when operating 1,000 or more miles of pole line, and 25 cents per mile of pole line when operating less than 1,000 miles.[d]

The rate of the privilege taxes paid by telephone companies operating for profit ranges from $2.50 to $100 for each exchange. On long-distance telephone companies the rate varies from 5 cents per mile of line to a flat tax of $250.[e]

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[a] Code, sec. 3856, as amended, Laws 1912, chap. 102.

Railroads in the Mississippi Levee District (several counties) pay annual privilege taxes for district purposes as follows: Main line, $350 per mile; branch lines, $210 per mile; narrow gauge, $87.50 per mile. Laws 1886, chap. 7, as amended, Laws 1908, chap. 125, and Laws 1914, chap. 282. See "Levee District Taxation," infra p. 239.

The tax is no greater on a double than on a single track railroad. The railroads are taxed without reference to the number of tracks upon a single right of way. Adams *v.* Railroad Co., 92 Miss., 566 (1908).

[b] Code, sec. 3810, as amended, Laws 1910, chap. 94, sec. 14.

A privilege tax upon express companies of $3,000 for doing business in the State was held void as to all interstate transportation, but valid as to all business to be exclusively performed within the State, and an injunction was ordered restraining the collection of the tax, until a separation could be made, if such separation were possible. U. S. Express Co. *v.* Hemmingway, 39 Fed. Rep., 60 (1889).

[c] Code, sec. 3867, as amended, Laws 1912, chap. 95.

A privilege tax of fixed amount on sleeping-car companies carrying passengers from one point to another within the State, and also according to mileage of railroad over which the company runs its cars, is not void as a regulation of, or license upon, interstate commerce, and it can not be avoided by proving that such business is compulsory and done at a loss. Pullman Co. *v.* Adams, 78 Miss., 814 (1901).

The company can not complain of being taxed for the privilege of doing a local business which it is free to renounce. It was agreed that the tax was a privilege tax. Pullman Co. *v.* Adams, 189 U. S., 420 (1903).

[d] Code, sec. 3875, as amended, Laws 1908, chap. 73, sec. 19.

A similar privilege tax on telegraph companies, but one which was in lieu of other taxes, was held valid and not an interference with interstate commerce, although the company taxed was engaged in sending interstate messages. Postal Telegraph Cable Co. *v.* Adams, 71 Miss., 555 (1893); affirmed, U. S. Supreme Court, 155 U. S., 688 (1895).

[e] Code, sec. 3876, as amended, Laws 1910, chap. 94, sec. 17.

Counties and municipalities are prohibited from levying a similar tax on telegraph, express, or sleeping-car companies.[a]

Freight Line and Equipment Companies.

Freight line and equipment companies pay to the State for state purposes, in lieu of all other taxes, a gross earnings tax of 3 per cent. This tax is based on intrastate earnings and on the proportion of interstate earnings which the mileage over which the business is done in the State bears to the total mileage.[b]

The operating of a trading car from which fruits and vegetables are sold in the State is subject to a state privilege tax of $100 for one car and $300 for two or more cars.[c] Each car from which ice is retailed in the State is subject to a similar tax of $25.[d]

Public Utility, Manufacturing, Mercantile, Mining, and Miscellaneous Corporations.

Domestic and foreign gas, light, heat, power, manufacturing, mercantile, mining, and miscellaneous corporations pay the general property tax assessed and collected locally for state and local purposes. In addition practically all these classes of corporations pay locally a privilege tax for state purposes.

Real and tangible personal property of these companies is assessed and taxed at its situs. Cash on hand or on deposit and certain credits are taxable.[e] The value of the right or franchise to do business as a corporation is taxable as property.[f] It is

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[a] Code, sec. 3909.

Municipalities of more than 600 inhabitants may levy one-half of the amount of the state tax on railroad companies. Opinion of Attorney General, Attorney General's Report, 1909–1911, p. 248.

[b] Laws 1912, chaps. 113 and 114.

[c] Laws 1910, chap. 96, as amended, Laws 1912, chap. 93. This privilege is not subject to a municipal tax.

The tax is an occupation tax and not a tax on each car operated. Zemurray *v.* Bouldin, 87 Miss., 583 (1905).

[d] Laws 1910, chap. 96.

[e] Code, sec. 4270, as amended, Laws 1912, chap. 90.

An assessment for taxation of a waterworks company for "capital invested in merchandise and manufacturing" included its pipes, hydrants, etc., but not its solvent credits. The latter were held taxable as omitted property. Adams *v.* Waterworks Co., 94 Miss., 601 (1909).

[f] Code, sec. 4267.

The assessed value of the personal property and of the real estate should be deducted from the market value of the capital stock, and the excess, if any, taxed. Panola County *v.* Carrier & Son, 89 Miss., 277 (1906).

This difference represents the value of the right of the corporation to exist, which is a franchise incident to all corporations, and of value, and constitutes part of its

assessed by the local assessor and taxed at the principal office of the corporation.[a]

Franchises, or rights to use the public streets, roads, etc., exercised by public-service corporations, are taxable items of property and subject to the general property tax.[b]

Certain kinds of new manufacturing plants are exempt from state, county, and levee taxation for the first five years of their establishment, and municipalities may grant such exemption for 10 years.[c]

State privilege taxes are imposed annually as follows: Gas companies, $30 to $300, and electric light companies, $25 to $400;[d] street car companies, $20 per mile;[e] cottonseed-oil mills, $85 to $1,250, according to capacity of mill;[f] cotton compresses, $50 to $200, according to number of bales handled;[g] planing mills, $5 to $62.50;[h] sawmills, $10 to $250, according to daily capacity;[i] shingle mills, $2.50 to $50;[j] turpentine distilleries, $25 to $100;[k]

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property; and this is true notwithstanding the corporation is chartered under general laws at small expense. People's Warehouse Co. *v.* Yazoo City, 97 Miss., 500 (1910).

The entire real and personal property is listed to the corporation, to which should be added the value of the franchise. This construction would make corporations liable for open accounts, notes or other evidences of debt to the same extent as individuals, and they should be so assessed. Opinion of the attorney general to the auditor of public accounts, Mar. 5, 1914.

The basis of assessment for both domestic and foreign corporations is the value of physical property plus the value of its franchise to do business. Interview with state tax officials, November, 1914.

[a] Code, secs. 4258, 4259.

This is simply a franchise tax, not a tax on corporate excess. Interview with state tax officials, November, 1914.

[b] The listing of the capital stock would not relieve a water company from the necessity of listing the franchise to use the streets, etc., as personal property. The capital stock has its taxable value, and the franchise, being personal property of a distinct kind, has a taxable value of its own. Adams *v.* Bullock, 94 Miss., 27 (1908).

[c] Laws 1912, chap. 115.

The power given by law to municipalities to aid and encourage the establishment of manufactories, by exempting from taxation for 10 years property used therefor, does not give power to exempt a manufactory already established and in operation, and not needing aid or encouragement, in consideration of its owners not appealing from an ordinance extending the limits of the town to include it. Adams *v.* Lamb Fish Lumber Co., 104 Miss., 48 (1913).

[d] Laws 1912, chap. 104.

[e] Code, sec. 3874.

[f] Ibid., sec. 3801, as amended, Laws 1912, chap. 99.

[g] Laws 1908, chap. 74.

[h] Code, sec. 3853.

[i] Ibid., sec. 3862.

[j] Ibid., sec. 3863.

[k] Ibid., sec. 3884.

turpentine extracting plants, one-fourth of a cent per cup or box;[a] creosoting plants, one-fortieth of a mill per foot of lumber treated;[b] meat-packing establishments, $250, and $10 per agency;[c] foundries and machine shops, $25 to $50;[d] portable gins, $25;[e] ice factories, $25 to $100, according to capacity of plant;[f] oyster-canning factories, $100;[g] fertilizer companies, $25 to $250, according to capital employed;[h] merchandise stores, $2.50 to $350, according to stock carried;[i] lumber dealers, $25 to $150;[j] oil depots, $50;[k] public warehouses, $2.50 to $20;[l] laundries, $5 to $25;[m] steam ferries operating in the State in whole or in part, $150;[n] trading boats, $50 to $200;[o] persons or corporations pursuing the business of buying, owning, or holding more than 1,000 acres of timberland in the State, 20 cents per acre on the excess.[p] Counties may not tax these privileges, and municipalities are forbidden to levy privilege taxes exceeding one-half the amounts specified for state privilege taxes.[q]

Stockholders and Bondholders.

Shares of stock of corporations whose property is taxed in the State are not taxed to the holders thereof. Other shares of stock are taxable to the holders.[r] Bonds of corporations bearing a rate of interest not greater than 6 per cent per annum are exempt,[s] but with this exception bonds are taxable to holders.[t]

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[a] Laws 1912, chap. 110.
[b] Ibid., chap. 111.
[c] Ibid., chap. 114½.
[d] Code, sec. 3816.
[e] Ibid., sec. 3819.
[f] Ibid., sec. 3824.
[g] Ibid., sec. 3497, as amended, Laws 1914, chap. 115.
[h] Ibid., sec. 3813.
[i] Ibid., sec. 3872.
[j] Laws 1908, chap. 74.
[k] Code, sec. 3843.
[l] Ibid., sec. 3888, as amended, Laws 1910, chap. 94.
[m] Ibid., sec. 3830, as amended, Laws 1912, chap. 96.
[n] Ibid., sec. 3814.
A city can not impose a tax on the privilege of operating a ferry exclusively in carrying passengers across a river from one state to another, as this would be a burden on interstate commerce. Ferry Co. *v.* State, 101 Miss., 65 (1911).
[o] Code, sec. 3780.
[p] Laws 1912, chap. 112. Collections under this law are in litigation. Interview with state tax officials, November, 1914.
[q] Code, sec. 3909.
[r] Ibid., sec. 4270, as amended, Laws 1912, chap. 90.
[s] Ibid., sec. 4251, as amended, Laws 1912, chap. 241.
[t] Ibid., sec. 4266.

Foreign Corporations.

Foreign corporations of the classes herein treated are subject to the same method and manner of taxation as domestic corporations of the same class.

III. FINANCIAL RESULTS.

Classification of Revenue.

The proportion of total state taxes for state purposes derived from corporations for 1912 was approximately 19 per cent.

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED SEPTEMBER 30, 1912.[a]

Total state receipts, all sources		$3,568,503.64
State taxes from corporations:		
Railroads—		
General property	$284,485.54	
Mileage	72,010.35	
Sleeping-car companies—		
General property	952.35	
Mileage	1,059.03	
Express—		
General property	453.78	
Mileage	10,988.68	
Telegraph—		
General property	3,550.19	
Fixed amount (privilege)	500.00	
Telephone, general property	10,714.44	
Insurance companies (taxes and fees)	181,069.98	
Fees, secretary of state [b]	18,025.02	
Total ascertainable state taxes from corporations		583,809.36
Other taxes:		
General property tax	2,027,659.72	
Privilege tax	440,843.73	
Feed and fertilizer fees	35,007.18	
Automobile licenses	22,000.00	
Oyster fund	9,899.43	
Insolvent taxes	926.21	
Total state taxes not from corporations		2,536,336.27
Total taxes for state purposes, all sources		3,120,145.63
Receipts from sources other than taxes:		
Penitentiary	284,859.83	
Colleges	83,366.13	
Trust and combine fines	45,380.50	
Depository interest	12,610.61	
Miscellaneous land receipts	12,072.31	

[a] Biennial Report, Auditor of Public Accounts, 1911–1913, p. 6.

[b] Some portion of this is collected from sources other than corporations, but the amount can not be determined.

Receipts from sources other than taxes—Continued.		
Experiment stations	$9,206.03	
Fees from land office	297.50	
Insane hospital	237.10	
Chickasaw school lands	240.00	
Sale of books	88.00	
Total receipts from sources other than taxes		$448,358.01
Total state receipts, all sources		3,568,503.64

IV. COMMENTS.

Historical.

Prior to 1875 the taxable property of railroad companies was assessed and taxed in the same manner as the property of individuals. The legislature, however, favored railroad development by granting charters containing various forms of exemptions from taxation. The law of 1875[a] required all railroad companies, not specifically exempt, to pay, in lieu of all other taxation, a privilege tax of $75 per mile for standard-gauge railroads, or $37.50 per mile for narrow-gauge railroads. One-third of the proceeds of this tax was distributed to the counties and the balance was retained by the State. In 1878 the rates were increased to $80 and $40, respectively, and the counties were given one-half instead of one-third the proceeds. In 1880[b] railroad property was assessed and apportioned to the counties for taxation by a state board, consisting of the governor, auditor of public accounts, treasurer, and secretary of state. In lieu of taxation by this method, railroads were permitted to pay a privilege tax ranging from $20 to $80 per mile; one-half was for the benefit of the State and one-half for the benefit of the counties. The statute named each railroad company and the rate per mile it might pay. Most of the railroads paid taxes under the latter provision in 1882 and 1883.[c] In 1884[d] railroads, neither specifically mentioned nor exempted from taxation, were given the option of paying either the general property tax or the privilege tax at the rate of $60 per mile. The distribution of this tax was changed in this year so as to give the counties two-thirds instead of one-half thereof. In 1890[e] the rates were again very materially increased, and for railroads named in the statute it varied from $50 to $150 per mile, and for railroads not so named it was made $100 per mile. In 1892[f] the optional system was repealed and the assess-

[a] Laws 1875, chap. 42.
[b] Laws 1880, chap. 6.
[c] See Auditor's Reports, 1882 and 1883.
[d] Laws 1884, chap. 22.
[e] Laws 1890, chap. 2.
[f] Laws 1892, chap. 74.

ment and apportionment of the values of railroad property for state and local taxation were entrusted to a railroad commission. In addition, railroad companies, unless exempt by charter provision, were required to pay state privilege taxes. For the purpose of assessing this tax railroads were divided into four classes, as at present, and the rates were $20, $15, $10, and $2 per mile, respectively.[a]

Privilege taxes on various occupations have always formed a part of the State's revenue system. In 1870 [b] express and telegraph companies were required to pay a privilege tax of $1,000. In 1875[c] the privilege tax on express companies was changed to $2,000, on telegraph companies to $1 per mile with a maximum of $2,000, and sleeping-car companies were taxed $1,000. In 1880 sleeping-car companies were given the option of paying $1,000 or 2½ per cent of gross earnings in the State.[d] In 1892 telegraph, sleeping-car, and express companies were assessed and taxed under the general property tax, the assessment and apportionment to the counties being made by the state railroad commission.[e] In this year also the state privilege taxes were reduced,[a] express companies being required to pay $500, and $1 per mile of railroad track over which business was conducted; telegraph companies $250 if operating 1,000 miles or more of line and 25 cents per mile if operating less than 1,000 miles in the State; and sleeping-car companies $100 (increased to $200 in 1896 [f]) and 25 cents per mile of railroad track over which cars were run. Telephone companies were required to pay a state privilege tax, ranging from $5 to $100, according to number of subscribers, in lieu of other state and county taxes.[a]

Provision was made, in 1874, for the creation of a state board of equalization, composed of ex officio state officers for the equalization of assessments of real and personal property among the several counties,[g] but the law was repealed two years later.[h]

Valuations of Public-Service Corporations.

In its 1912–13 report the railroad commission called attention to the gradual increase in the assessments of public-service corporations. The assessment of all public-service corporations for the year 1911 was approximately $51,000,000. This was increased

[a] Laws 1892, chap. 75.
[b] Laws 1870, chap. 4.
[c] Laws 1875, chap. 1.
[d] Laws, 1880, chap. 6.
[e] Laws 1892, chap. 74.
[f] Laws 1896, p. 46.
[g] Laws 1874, chap. 28.
[h] Laws 1876, chap. 37.

in 1912 to about $58,000,000; and the commission estimated assessments of this property in 1913 would reach almost $70,000,000.[a] The assessments of these companies for 1912, by classes, were as follows:[b]

Railroads, steam and electric	$56,773,214
Telephone companies	1,797,473
Telegraph companies	711,329
Express companies	75,678
Passenger car companies	267,132

The commission states that the increase has been made solely because of its belief that the public-service corporations up to that time had not borne a just proportion of taxes. It further stated that the question of proper assessment was complicated by the fact that taxes in various sections of the State were not uniform; for example, in one section the rate was made on about 30 per cent of the true value; in another, it may be 50 per cent to 60 per cent; and in another, it might run as high as 100 per cent. Under these conditions the commission endeavored to assess public-service corporations on the basis of a general average.

Local Assessment System.

Commenting on the lack of uniformity of assessments as between counties the then governor of the State said at the Conference of the International Tax Association, held at Milwaukee, Wis., in 1910:

"The assessors are elected, and often they look to their constituency just as other citizens are looking to their local benefits. I have a letter from one of the assessors in my State, in which he says that the tax lists, as reported, were entered on the rolls in every case, without any change, just as the individuals handed them to him. He submitted it to the board of supervisors, and the board of supervisors reduced the assessment over $900,000 without any complaint at all, and the reason assigned was the state school fund. Sixty per cent of our state taxes go to the school fund; and there are some counties, with low assessments, which get more for school funds than their whole state taxes."[c]

Central Tax Board.

The present method of equalizing assessments is described by the same official as follows:[c]

"There is a power of revision theoretically. Any taxpayer or officer can appeal from the board's assessment to the courts.

[a] Biennial Report of the Mississippi Railroad Commission, 1912–13, p. 4.
[b] Ibid., p. 283.
[c] State and Local Taxation, Fourth International Conference, 1910, p. 346.

The taxpayer sometimes does appeal for overassessment, but no one ever appeals for the State for underassessment, and the consequence is it is a power and right possessed by the State and individuals to be used for the State which is practically never exercised."

The creation of a tax commission and equalization board to equalize the taxes over the State is recommended by the railroad commission. After such equalization, the commission suggested it would be a much easier matter to determine what proportion of the taxes the public-service corporations should pay.[a]

Separation of Sources of State and Local Revenue.

In commenting on tax "dodging" by which property in some counties is assessed at about one-fourth of its worth while in others it is assessed at 75 per cent of worth, the governor in a message to the legislature of 1910,[b] stated that the temptation to reduce the assessments of whole counties would be entirely removed if the constitution were so amended as to authorize the legislature to so arrange the taxing system that the state government should be sustained entirely from revenue derived from fees collected by state officers, proceeds of labor of convicts, privilege taxes, an inheritance tax, and all or part of the taxes from public-service corporations, leaving to counties and municipalities all taxes derived from visible property, real or personal. Under such a system the necessity for a state levy and state concern in local assessments would be avoided. The governor stated further that this policy works admirably where properly tested, and is constantly growing in general favor.

Levee District Taxation.

Perhaps the most heavily taxed of any localities in the United States is the territory embraced within the Mississippi and the Yazoo-Mississippi Delta levee districts. The former district embraces the counties of Bolivar, Washington, Issaquena, Sharkey, and a small part of the county of Warren; the latter district, the counties of Coahoma, Leflore, Quitman, Sunflower, Tunica, and parts of the counties of De Soto, Holmes, Tallahatchie, and Yazoo.

The following taxes have been levied for levee purposes on property within the Mississippi levee district for the year 1914:[c] A

[a] Biennial Report of the Mississippi Railroad Commission, 1912–13, p. 5.

[b] Laws 1910, p. 414.

[c] Letter of assistant chief engineer, Board of Mississippi Levee Commissioners, Greenville, Miss., Nov. 7, 1914.

property tax of 17½ mills on each dollar of assessed valuation of all property, whether owned by corporations or individuals, except operating property of railroad companies; a tax on operating property of railroads of $350 per mile of main line of standard gauge, $210 per mile of branch line, and $87.50 per mile of narrow gauge; a flat tax of 5 cents per acre on all land, and the same amount on city, town, or village lots of less than an acre, in the district; a production tax on cotton grown in the district of one-fifth of 1 cent per pound of lint cotton.

In the Yazoo-Mississippi Delta levee district a property tax was imposed for the year 1914 on all taxable property within the district, ranging from 8.6 mills on the dollar in some counties, to 12 mills in other counties. Annual privilege taxes are imposed on practically the same subjects and in the same amounts as are imposed by the State for state purposes.[a] A flat tax of 5 cents per acre is imposed on all land in the district.[b] For the tax year 1912 there was collected in this district for levee district purposes an ad valorem tax of $331,661; privilege taxes of $54,260, and an acreage tax of $114,084.

Bibliography.

The following is a list of the more important publications in addition to the constitution, the statutes, and the court reports, of value in the study of corporate taxation in Mississippi:

Biennial Report of the Railroad Commission, 1912–13.
Biennial Report of Auditor of Public Accounts, 1912–13.
Biennial Report of the Attorney General, 1912–13.
State and Local Taxation, Proceedings of the International Tax Association, 1910, Governor Noel's remarks on "Real Estate Classification," pp. 345–351.

[a] Laws 1902, chap. 80; privilege tax laws of the Yazoo-Mississippi Delta levee district, 1910; letter of state auditor, Nov. 3, 1914.

[b] Letter of state auditor, Nov. 3, 1914.

ARKANSAS.

I. GENERAL VIEW.

Chief Features.

First. The application of the general property tax to practically all property, and a capital stock or annual franchise tax to all corporations herein treated.

Second. The taxation of freight car companies on gross receipts.

Third. The assessment of practically all important classes of corporations by a selected state central board.

General Property Tax.

Domestic and foreign manufacturing, mercantile, transmission, and transportation corporations, except private freight-car companies, are subject to the general property tax on all property including "franchise," namely, the franchise, or right to do business in the State, as distinguished from "the right to be a corporation." This tax is paid locally for both state and local purposes, and as applied to transportation and transmission companies is assessed by the Arkansas Tax Commission.

Taxes Supplemental to the General Property Tax.

In addition to the general property tax, all corporations herein treated are subject to a capital-stock or an annual franchise tax, which in legal theory is levied on the right to be or exist as a corporation, and freight-car companies pay also a state tax based on intrastate gross receipts.

Stockholders and Bondholders.

The taxation of both the capital and property by judicial decision exempts the shares of stock in the hands of individual owners. Bonds are taxable to the individual holders but are seldom reached by the assessing authorities.

Foreign Corporations.

Foreign corporations of the classes herein treated are taxed practically in the same manner as similar domestic corporations.

Administration.

The Arkansas Tax Commission, a selected board, is composed of three members appointed by the governor and confirmed by the senate for terms of six years. The law of 1909 creating this commission will expire by limitation January 31, 1927. Unless continued by future legislation the commission will upon that date be terminated.[a]

The principal powers and duties of the commission are as follows: To assess the operating property of railroad, express, sleeping car, telegraph, telephone, pipe-line, and public utility companies; to determine the capital stock taxes applicable to all corporations, and the gross-receipts tax applicable to freight car companies; to exercise general and complete supervision over the assessment and collection of taxes and the enforcement of the tax laws of the State, and over county tax assessors, tax collectors, county boards of review and equalization, and other officers charged with the assessment and collection of taxes; to confer with, advise, and direct all assessors, collectors of state and county taxes, and the county boards of equalization and revenue, as to their duties;[b] to compile, codify, and digest the tax laws of the State; to direct actions, prosecutions, and proceedings for the enforcement of the tax laws, and prosecutions against tax officials for official misconduct, also to require prosecuting attorneys and the attorney general to commence and prosecute such actions; to require information from public officials as to tax matters, values of franchises or intangible property or assets subject to taxation, and to require individuals and corporations to furnish information concerning their capital, current assets and liabilities, value of franchises, property earnings, etc.; to summon witnesses and require the production of books, papers, and documents; to meet as a state board of equalization annually, for the equalization of property values, and to raise or lower the aggregate valuation of real or any class of personal property of any county, town, village, or city.[b] Changes in the total assessed valuation are not made until after proper notice to the county judge and publication in a local newspaper notifying the citizens to appear and show cause why changes in property value should not be made. Such changes as the board makes in assessment values

[a] Laws 1909, act 257; also Laws 1911, act 251, and Laws 1913, act 153. See Constitution, Art. xix, sec. 9, infra, p. 245.

[b] This power does not permit the commission to change the assessment of a particular piece of property assessed locally; the assessment of locally assessed property can be changed only by classes in a subdivision such as school districts. Interview with state tax officials, September, 1914.

are certified to the county clerk, who is required to raise or lower the assessments of property on the county assessment records according to said certificate.

A county assessor, elected biennially, assesses all other property, both real and personal.[a] A county board of equalization, composed of three persons in some counties, and of five in others, appointed by the governor for a term of two years, equalizes the assessments of the property in the county,[b] after due notice to the taxpayers, by raising or lowering the valuation of real and personal property, moneys, and credits. This board also assesses all omitted property and corrects any errors found to have been made in the assessment of property. Appeals from the action of the county board may be taken to the county court, and from the final order of that court to the circuit court, and thence to the supreme court.[c] All changes made in assessments by the board and all assessments of omitted property are required by statute to be published in a local newspaper.[d] Appeals from the action of the tax commission also may be taken to the courts.

The sheriff of each county is ex officio collector of taxes.[e] The gross-receipts taxes of freight car companies and the capital-stock taxes of all companies are collected by the state treasurer.[f]

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[a] Stats., sec. 6955.

[b] While the county boards of equalization are authorized to equalize individual assessments, the state tax commission is not authorized to do so, but only to adjust and equalize the valuation of real property by counties, districts, towns, villages, and cities, and to equalize the valuation of any class of personal property in any county, town, township, village, or city. Bank of Jonesboro *v.* Hampton, 92 Ark., 492, (1909).

[c] Stats., secs. 6991–7008, as amended, Laws 1911, acts 217 and 249.

The system of appeals provided by statutes in case of overvaluation of property for taxation furnishes a complete remedy, and where a taxpayer fails to pursue such course, he can not obtain relief in the circuit court. Clay County *v.* Bank of Knobel, 105 Ark., 450 (1912).

Where complainant corporation fixed the value of its personal property at one figure and the assessor at a higher figure, and the assessment of taxes was on the latter, such assessment was not void, but amounted merely to an overvaluation, and hence complainant's remedy was by application to the assessment board for review, and not by a suit in equity to restrain collection of taxes. Arlington Hotel Co. *v.* Buchanan, 110 Ark., 34 (1913).

[d] Initiative act No. 2, 1914. See Acts of Arkansas 1915, p. 1511.

[e] Stats., sec. 7037.

[f] Laws 1909, p. 559. Laws 1913, p. 518.

Sources of revenue in Arkansas:

Municipal and local districts.—(*a*) General property tax; (*b*) business taxes and licenses; (*c*) fines, fees, etc.

County.—(*a*) General property tax; (*b*) poll tax; (*c*) business taxes and licenses; (*d*) fines, fees, etc.

State.—(*a*) General property tax; (*b*) corporation taxes; (*c*) inheritance tax; (*d*) business taxes and licenses; (*e*) fines, fees, etc.

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION.[a]

"The State's ancient right of eminent domain and of taxation is herein fully and expressly conceded; and the general assembly may delegate the taxing power, with the necessary restriction, to the State's subordinate political and municipal corporations to the extent of providing for their existence, maintenance and well being, but no further." [b]

All property subject to taxation shall be taxed according to its value to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value, provided the general assembly shall have power from time to time to tax hawkers, peddlers, ferries, exhibitions, and privileges in such manner as may be deemed proper. Provided, further, that the following property shall be exempt from taxation: Public property used exclusively for public purposes; churches, cemeteries, schools, and buildings and grounds and materials used exclusively for public charity.[c]

"All laws exempting property from taxation other than as provided in this constitution shall be void." [d]

The power to tax corporations and corporate property shall not be surrendered by any contract or grant to which the State may be a party.[e]

"The general assembly shall not have power to levy state taxes for any one year to exceed in the aggregate one per cent of the assessed valuation of the property of the State for that year." [f]

"No county shall levy a tax to exceed one-half of one per cent for all purposes, but may levy an additional one-half of one per cent to pay indebtedness existing at the time of the ratification of this constitution." [g]

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[a] Except as otherwise indicated, references are to the constitution as contained in Kirby's Digest of the Statutes, 1904.

[b] Constitution, 1874, Art. II, sec. 23.

[c] Ibid., Art. XVI, sec. 5.

The legislature has the power to classify property for the purposes of taxation and to provide for the valuation of different classes by different methods. St. Louis I. M. & & S. R. Co. *v.* Worthen, 52 Ark., 529 (1890).

[d] Constitution, Art. XVI, sec. 6.

[e] Ibid., sec. 7.

[f] Ibid., sec. 8.

[g] Ibid., sec. 9.

"The general assembly shall have no power to create any permanent State office not expressly provided for by this constitution." [a]

STATUTES. [b]

General Property Tax.

Domestic and foreign corporations, unless exempt, are subject to the general property tax, payable locally, for state and local purposes. [c]

The statute requires the assessment of all property at fair market value or the value obtainable by sale under normal conditions. [d] In practice, however, property is usually assessed at from 40 to 50 per cent of such value. [e] All property, except that assessed by the state tax commission, is assessed locally, real property in odd numbered years and personal property each year. [f]

"Real property and lands" includes not only the land itself, but all buildings, structures, improvements, and fixtures, and all rights and privileges belonging thereto. [g] Timber rights owned separately from the land are taxed separately. [h]

"Personal property" includes (1) everything tangible subject to ownership, and not forming a part of any real property as above described; (2) capital stock, undivided profits, and all other means not forming part of the capital stock, of every company, inclusive of shares and interests in ships, vessels, or boats navigating any of the waters within the borders of this State. [g]

"Credits" are held to mean, when used in the revenue act, the excess of the sum of all legal claims and demands, whether for money or other valuable things, due to the person liable to pay taxes thereon, including deposits in banks, or with persons in or out of the State (estimating such claims or demands at their true value in money), over and above the sum of certain legal bona-fide debts owing by such persons. [g]

"Money" is held to include gold and silver coin, and bank notes of solvent banks in actual possession, and deposits which the depositor is entitled to withdraw in money on demand, within the State or elsewhere, provided the same is subject to order. [i]

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[a] Constitution, Art. XIX, sec. 9.

[b] Except as otherwise indicated, the references herein are to Kirby's Digest of the Statutes, 1904.

[c] Stats., sec. 6873.

[d] Ibid., sec. 6906.

[e] Interview with state tax officials, September, 1914.

[f] Stats., secs. 6912, 6976.

[g] Ibid., sec. 6872.

[h] Laws 1905, p. 738.

Intangible values are taxable.[a]

Tangible personal property is taxed where located.[b]

When intangible personal property of a corporation is located in a county other than that in which its principal office is situated the situs for taxation is the principal office of the company.[c] The valuation of certain real and personal property is distributed on a mileage basis.[d]

Public property used exclusively for public purposes, churches, cemeteries, school buildings and apparatus, libraries, and grounds used exclusively for school purposes, and buildings and grounds and materials used exclusively for public charity, are exempted from taxation.[e]

Capital-Stock or Annual Franchise Tax.

Domestic and foreign corporations pay to the State for state purposes a capital stock or annual franchise tax hereinafter referred to as the capital-stock tax. It is in legal theory levied "on the right to be or exist as a corporation" at the rate of one-fifteenth (1/15) of 1 per cent of the subscribed, issued, or out-

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[a] Stats., sec. 6936, as amended, Laws 1907, p. 1225.

In assessing manufacturing, mercantile and miscellaneous companies, assessors were instructed to take the assessed values in the State of all the company's real property, and its personal property as made out on the personal list under Stats., sec. 6910. As property is supposed to be assessed at 50 per cent of its full value, the assessed value must be doubled. The property value should then be deducted from the total of the actual value of the capital stock and bonded indebtedness, and one-half the remainder taken as the assessment for the intangible value. Instructions of the Arkansas Tax Commission to the county assessors, 1913.

[b] Stats., sec. 6936, as amended, Laws 1907, act 451. Letter of Arkansas Tax Commission, Dec. 8, 1914.

Personal property of a nonresident which is being used in this State in the construction of the roadbed of a railroad company is subject to taxation. Eoff *v.* Kennefick-Hammond Co., 80 Ark., 138 (1906).

Previous to the amendment of 1907, it was held that all the personal property of a corporation should be assessed for taxation in the same county. Harris Lumber Co. *v.* Grandstaff, 78 Ark., 187 (1906).

[c] The designation of a corporation's domicile in its articles of association is not conclusive evidence of its domicile for the purposes of taxation. (The situs of the capital stock and surplus of a domestic insurance company, the same as other corporations, is for the purpose of taxation in the county where the corporation has its principal place of business.) The filing and recording of the papers of removal from one place in the State to another place in the State do not in themselves remove the place of business where the corporation continues to transact its business at its former domicile. Home Fire Ins. Co. *v.* Benton, 106 Ark., 552 (1913).

[d] Interview with state tax officials, October, 1914.

[e] Stats., sec. 6887; Constitution, Art. XVI, sec. 5.

standing capital stock employed in the State.[a] Corporations having no capital stock employed in the State, or having a capital stock employed in the State which is less than $13,333, pay a tax of $10.

All corporations are required to report to the tax commission on blanks prepared by it detailed information with respect to their organization and capitalization.[b]

Railroad, Express, Sleeping-Car, Telegraph, Telephone, and Pipe-Line Companies.

Railroad, express, sleeping-car, telegraph, telephone, and pipe-line companies, domestic and foreign, pay locally the general property tax for both state and local purposes on all property, including "franchise" or the right to operate in the State, as distinguished from "the right to be a corporation."[c] In addition, they pay to the State for state purposes the capital-stock tax.

Assessments of all property used in the various lines of business conducted by these classes of corporations are made by the state tax commission. The statute directs the commission to determine the aggregate value of the property of each company of the above named classes, whether they operate partly or wholly within the State. This is usually done by applying the three following methods: (*a*) By taking the physical value of the property; (*b*) by adding to the value of the outstanding stock the value of the

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[a] The wording of this statute is construed by the tax commission to apply in like manner to both foreign and domestic corporations. Interview with state tax commissioner, October, 1914.

In an action by the State against a foreign railroad company, also operating in several other States, to collect a franchise tax upon the proportion of the outstanding capital stock of the corporation represented by the property owned and used in business transacted in the State, the constitutionality of the act was sustained. The value of the right or privilege to be or exist as a corporation can not be ascertained under ordinary rules for the taxing of property; but since it is a privilege or right granted by the State, a franchise tax may be imposed upon this right or privilege for the purpose of raising revenue.

The tax, as affecting a railroad engaged in interstate transportation, is not invalid as a taxation of interstate commerce. St. L. S. W. Ry. Co. *v.* State, 106 Ark., 321, (1913); affirmed, St. L. S. W. Ry. Co. *v.* Arkansas, 235 U. S., 350 (1914).

The legislature at its next session will be asked to enact a law taxing railroads and other public-service corporations on their intrastate gross earnings. Interview with tax commission, October, 1914.

[b] Laws 1911, act 112, p. 67, as amended, Laws 1913, act 122, p. 518.

[c] Under constitution, 1868, Art. V, sec. 48, providing that the property of corporations now existing or hereafter created shall forever be subject to taxation the same as property of individuals, the property of a railroad company was subject to both general and special taxation. St. Louis I. M. & S. Ry. Co. *v.* Board, 103 Ark., 127 (1912).

outstanding bonded indebtedness as of a specified date; (*c*) by capitalizing the net earnings at from 6 to 8 per cent for railroad trunk lines, or from 6 to 18 per cent for smaller railroad lines, or from 9 to 18 per cent, but usually at about 12 per cent, for other classes of companies. The valuation as found by any one, or by averaging the results of these three methods, whichever seems just in each particular case, may be used by the commission as the aggregate value of the entire property and franchise.[a]

For the purpose of describing the method of assessing railroads in Arkansas, railroad property may be classified as operating property, namely, all property including franchise necessary to railroad operation, maintenance and existence, and as nonoperating property, namely, property owned by a railroad company but not used in the railroad business.

Operating property may be subclassified as:

1. Main track, including the value of tunnels, cuts, ties, right of way and superstructures thereon, except buildings.

2. Rolling stock, which includes the value of locomotives and all classes of cars.

3. "Franchise" or the right to operate in the State as distinguished from "the right to be a corporation."

4. Sidetrack, which includes the value of right of way, and all right-of-way superstructures, except buildings, on industrial sidings, turnouts, etc.

5. "Fixtures," which include the value of stations, depots, shops, water tanks, and other buildings situated on the right of way.

6. Materials, which include the value of stores, tools, etc., used in connection with the railroad.

The tax commission assesses all of the property included in the six subclasses above enumerated, and county assessors assess all of the nonoperating property of railroads.[b]

The taxable value within the State of interstate railroads is determined by first deducting from the aggregate value the value of non-operating property located both within and without the State, and that proportion of the remainder which the number of miles

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[a] Interview with state tax officials, October, 1914.

[b] Laws 1911, act 251, secs. 13, 14, p. 243.

Stock yards used in the operation of a railroad should be assessed by the state board as a part of the right of way. Land belonging to a railroad company which is not a part of its right of way, but is being held to meet the requirements of its probable future needs in the way of additional terminal facilities, is assessable by the local assessor. St. Louis I. M. & S. Ry. Co. *v.* Miller, 67 Ark., 498 (1900).

of main track within the State bears to the number of miles of main track wherever located is taken as the value of operating property taxable in Arkansas. The various subclasses of operating property are then determined by the commission and the valuation of main track and of rolling stock is apportioned on the main track mileage basis to the counties and minor taxing districts through which the roads pass. The valuations of the three last subclasses are not apportioned, but are assigned directly to the counties, towns, and districts wherein the various items of property are located.[a]

The valuation of franchises is distributed to the counties and minor taxing districts on the basis of total value of all tangible operating property assigned thereto.[b]

The taxable value of property used in interstate express and sleeping-car business is determined by the proportion which the number of miles of railroad main track traveled by express and sleeping cars within the State bears to the entire number of miles of railroad main track wherever traveled.[c] The taxable value of the property (including office fixtures, apparatus, teams, etc.) thus found by the commission is then apportioned on the main-track mileage basis to the several counties, towns, and minor taxing districts wherein the express and sleeping-car routes lie. The taxable value of property used in interstate telegraph, pipe-line, and telephone business is determined and apportioned in like manner on the bases, respectively, of telegraph right-of-way mileage, pipe-line mileage, and telephone-pole miles and number of instruments installed.[d]

When the valuations for companies of the above-named classes have been certified by the commission to the assessors of the vari-

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[a] Laws 1911, act 251, sec. 14, p. 244.

[b] Letter of state tax commission, Dec. 8, 1914.

[c] The value of the property within the State, of an express company doing business in several States, is not to be fixed arbitrarily at the proportion of the capital stock which the number of miles of line of railway employed in the State bears to the total number of miles of railway employed, except when there is no evidence to show that the true value of the property in the State is otherwise, but such evidence may be offered by the company, and must be received and considered by the board for the purpose of determining the true value of the property within the State.

The assessment of the property of an express company within the State at its true value, although this is more than the value of its tangible property in the State and is in part due to the fact that such property is a portion of a large "profit-producing plant" extending into other States, is not unconstitutional. Wells, Fargo & Company's Express, Appt. *v.* Crawford County et al., 63 Ark., 576 (1897).

[d] Laws 1911, act 251, secs. 6, 7, p. 238. Interview with state tax officials, October, 1914.

ous counties, these valuations, like those locally assessed, are taxed at the general property tax rates for both state and local purposes.

Elaborate reports showing details of classification, earnings, trackage, valuation, and location of property in each school district of the State are required by statute of each company of the above-named classes operating or doing business in the State.[a]

Freight-Car Companies.

Freight-car companies, domestic and foreign, engaged in the business of operating or running cars for the purpose of transporting merchandise over any railroad line in this State, not owned or leased by such railroad company, pay to the State for state purposes a tax of 5 per cent on their gross receipts for business done in the State as determined by the state tax commission.[b] They also pay to the State for state purposes the capital-stock tax.

Public Utilities.

Every power, heating, electric, gas, water, street-car, interurban railway, toll-road, and bridge, or other similar company (except steam railroad, telegraph, telephone, express, car, and pipe-line companies) pays locally, for state and local purposes, the general property tax on all property, including intangible values, such as good will, easements, and franchises of every kind. In addition they pay to the State for state purposes the capital-stock tax.

Assessment and apportionment of the property of these companies is made by the tax commission. For the purpose of assessment the tax commission first determines the entire value by the same methods used in determining the entire value of railroad companies. From the entire value so determined is deducted the value of all tangible property of the company, and the remainder is the value of the intangible property, including good will, franchises, etc.

Each company of the classes above mentioned is required to report to the tax commission details with respect to capitalization, earnings, and the value and location of its property.[c]

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[a] Laws 1911, act 251, p. 233, and interviews with state officials, October, 1914.

[b] Laws 1909, p. 556. (Apparently the tangible property of freight-car companies is taxed the same as the property of individuals.)

[c] Laws 1913, act 153, p. 615.

Manufacturing, Mining, and Mercantile Corporations.

Manufacturing, mining, and mercantile corporations, domestic and foreign, pay the general property tax locally for state and local purposes. In addition, such companies pay to the State for state purposes the capital-stock tax.

Merchants and mercantile companies are assessed locally on merchandise, including all goods, and on accounts and notes. The valuation of merchandise is based on the average amount of goods on hand during the preceding year. Manufacturers are assessed locally on the average value of all articles purchased, received, or otherwise held for the purpose of manufacturing on hand during the year previous to the assessment, and on the value of engines and machinery used for manufacturing purposes.[a]

Stockholders and Bondholders.

Shares of stock in corporations which are taxed on their capital and property in Arkansas are not taxable to individual holders.[b] Bonds are taxable in the hands of the holders but are seldom reached by the assessing authorities.

Foreign Corporations.

Foreign corporations of the classes herein treated are taxed on all property in the State and on capital in practically the same manner as similar domestic corporations.

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[a] Stats., secs. 6916–6918.

It was immaterial that a merchant, after an assessment was made, purchased more goods and placed them in his store, since such goods would be considered in making the average of the assessment for the succeeding year. Froug-Smullion & Co. *v.* Pulaski County, 103 Ark., 397 (1912).

A company owning land and engaged in sawing timber on it is a manufacturer and is required to list two kinds of personal property, viz, (1) all articles purchased and received or held for the purpose of being used in manufacturing, which from time to time it shall have had on hand during the previous year; (2) all its other personal property owned by it on the assessment day, to be assessed according to its value on that date. In re Arkansas Cypress Shingle Co., 74 Ark., 28 (1905).

See note [a], p. 246, showing attempt to reach "corporate excess."

[b] Stats., sec. 6902.

Notes, bills of exchange, stock, and securities of all kinds are property and subject to taxation. Ouachita Co. *v.* Rumph, 43 Ark., 525 (1884).

Under Stats., sec. 6902, a resident owner of shares of stock in a domestic insurance company is not required to list such stock for taxation. Dallas County *v.* Banks, 87 Ark., 484 (1908).

The taxation of both the capital stock and property of the corporation and of the shares held by its stockholders constitutes double taxation. The fact that the domestic corporation has invested the greater part of its capital stock in certificates of stock in other corporations in this State and elsewhere does not exempt so much of its capital stock from taxation. Dallas County *v.* Home Fire Ins. Co., 97 Ark., 254 (1911).

III. FINANCIAL RESULTS.

Classification of Revenue.

The proportion of total state taxes for state purposes derived from corporations for 1912 was approximately 30 per cent

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED SEPTEMBER 30, 1912.[a]

Total state receipts, all sources		$3,177,189.11
State taxes from corporations:		
Railroads—		
General property[b]	$525,061.19	
Capital stock	38,883.00	
Sleeping-car companies—		
General property[b]	4,265.27	
Capital stock	2,521.00	
Freight car, and sewing-machine companies—		
Gross receipts	1,025.16	
Capital stock	25.00	
Express companies—		
General property[b]	5,228.99	
Capital stock	543.00	
Telegraph companies—		
General property[b]	6,485.75	
Capital stock	552.00	
Telephone companies—		
General property[b]	15,062.26	
Capital stock	1,509.00	
Other companies, capital stock (franchise)	69,425.94	
Pipe lines, oil and gas companies[b]	8,896.31	
Banks, general property[c]	52,305.43	
Insurance companies, taxes and fees	83,991.31	
Secretary of state, fees	40,277.90	
Total ascertainable state taxes from corporations		856,058.51
Other taxes:		
General property tax (less $617,305.20 above estimated)	1,846,331.41	
Inheritance tax	23,664.40	
Automobile, etc., licenses	13,137.32	
Liquor dealers' tax	87,134.38	
Peddlers' license	1,350.00	
Cattle-tick eradication tax	11,485.95	
Total state taxes not from corporations		1,983,103.46
Total taxes for state purposes, all sources		2,839,161.97

[a] Biennial Report of Treasurer, 1911–12.

[b] Estimated by applying state rate of 0.00675 to the property values found in Report of State Tax Commission, 1910–1912.

[c] Estimated by applying state rate to the property values found in Report of Auditor, 1911–12, p. 421.

Receipts from sources other than taxes:		
Penitentiary	$173,114.94	
United States aid to colleges and for forest reserve	53,487.04	
Sales of tags (fertilizer and feedstuff)	61,531.92	
Antitrust suits	15,750.00	
Land sales, fees, escheats, and redemptions	27,220.04	
Sale of books, teachers' licenses, and auditor fees	6,923.20	
Total receipts from sources other than taxes		$338,027.14
Total state receipts, all sources		3,177,189.11

IV. COMMENTS.

Historical.

Arkansas, like most of the southern and southwestern States, depends almost entirely on the general property tax system. This system, introduced by the territorial government at an early date, and continued by the first general revenue laws enacted by Arkansas as a State, still provides the chief source of state and local revenue.

During territorial days manufacturing interests consisted principally in sawmills, tanyards, and distilleries; these and all merchandise were taxed by the first state legislature for state and county purposes at one-half of 1 per cent on their value.[a] Within the 21 years following the revenue laws remained unchanged, but general revisions were made in 1868, in 1871, and in 1873.

The principal results of these revisions were: The establishment of the county assessor system, of the equalization system by state and county boards, of an ex officio board of railroad commissioners with authority to hear appeals from railroad assessments, and of a system of assessing the gross receipts of express and telegraph companies for taxation at the general property tax rates.

General revisions and reenactments of laws were again made in 1875, in 1883, and in 1887. By the changes effected special provisions were made for the local assessment of gas, telephone, water, bridge, and street railway companies, and the authority of the railroad commission was extended so that the taxable value of all railroad property was to be fixed by it and certified to the counties for assessment and taxation.

In 1879 net earnings were made the basis for ascertaining the value of railroad property for taxation purposes.[b] The method was changed in 1883[c] to the value of the tangible property, excluding the value of embankments, tunnels, cuts, ties, trestles, and bridges. As certain property was exempted from taxation by the

[a] Laws 1836, p. 189.
[b] Laws 1879, p. 39.
[c] Laws 1883, pp. 199, 229.

latter method in violation of the constitution,[a] the legislature in 1887[b] amended the law so as to require all parts of railroad track to be assessed. Railroad property was assessed by the board of railroad commissioners prior to 1909, but in that year this duty was transferred to the Arkansas Tax Commission.[c]

In 1907 the legislature imposed a tax on the authorized capital stock of every foreign and domestic corporation. This tax was graduated in amount so as to provide a minimum of $10 and a maximum of $100.[d] It was repealed and a new act, which underwent several changes, now provides a tax at the rate of one-fifteenth of 1 per cent on the subscribed, issued, or outstanding capital stock employed in the State.[e]

In 1909 two important laws were enacted. One created for the first time a state central assessing body known as the Arkansas Tax Commission, and the other provided a 5 per cent gross-receipts tax on private freight-car companies.[f] Another law passed during the same year provided that the valuation placed upon railroads for determining freight rates should be used as an additional basis for taxation purposes.[g]

The enactment of a general revenue law was attempted at the special session of the legislature in 1911, but was defeated by referendum.[h]

State Tax Commission.

In addition to the duties enumerated under the subheading "Administration,"[i] the Arkansas Tax Commission is required to report to the governor annually and to the legislature at its regular sessions.

Since the creation of this commission in 1909, says the second biennial report, issued in December, 1912, every effort has been made to secure the proper assessment and equalization of property. As a result, assessments have increased over $98,000,000, or over 30 per cent, in three years, and conditions in many counties have improved materially. Nevertheless, without further tax

[a] Little Rock and Ft. Smith Ry. Co. *v.* Worthen, 46 Ark., 312 (1885).

[b] Laws 1887, p. 155.

[c] Laws 1909, p. 764.

[d] Laws 1907, p. 1213.

[e] Laws 1911, p. 67, as amended, Laws 1913, p. 518; repealing Laws 1909, act 260, p. 780, and Laws 1907, act 443, p. 1213.

[f] Laws 1909, p. 556.

[g] Ibid., p. 698.

[h] Laws 1911, p. 495; also Report of Secretary of State, 1909–1912, p. 411.

[i] Supra, p. 242.

legislation, the commission can not accomplish even approximate equalization. It is desirable to find some other method of raising the state revenue, and the commission is of the opinion that either the Minnesota or Wisconsin system, by which the state revenue comes almost wholly from public utilities, is much better than that at present prevailing in Arkansas. Before either plan can be adopted, however, a constitutional amendment will be necessary.[a]

Increased Powers Granted the Tax Commission.

Based upon the showing made by the commission with respect to new duties imposed in 1911, whereby the assessment of telephone companies was increased 75 per cent over the assessment by local officials for the previous year, and upon its own recommendation, the commission was, in 1913, granted additional authority so as to include the assessment of all municipal utilities, such as gas, street railway, power, and electric companies.

Additional power was also recommended, but not granted, to equalize individual assessments. In this connection, the commission is of the opinion that, although under the present law it is authorized to increase or reduce horizontally all property values or that of a class of property, in a taxing district, it is impossible for the commission to perform properly the duties of a state board of equalization without at least a limited power to equalize individual assessments. It urged that it be authorized, when it has made a horizontal raise or reduction, to reduce or increase any individual assessment. A right of appeal would protect the individual, and the commission could equalize assessments between counties without unjustly increasing the burdens of individual taxpayers. This recommendation was not, however, favorably acted upon by the legislature.

Limitation on Tax Rates.

The commission recommended to the 1913 legislature a system of tax-rate limitations, but no law was passed in accordance therewith. According to the commission, existing tax rates make it impracticable to assess property at full value, and it suggested to the legislature that a sliding scale of state rates, whereby such rates would be automatically reduced, as the valuation is increased, would be a protection against unduly burdensome taxation, and would, without further change in the law, enable assessors to assess at full value. No action was taken by the 1913 legislature in this matter.

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[a] Second Biennial Report of Arkansas Tax Commission, 1910–1912, pp. 33, 34.

Corporate Excess.

Aside from the utilities assessed by the commission, there is, according to the report above mentioned, practically no tax collected on the intangible values of property in the State. A statute was passed in 1883[a] for the purpose of assessing corporate excess, but the law for all practical purposes is a dead letter; the commission recommends the repeal of the act and the passage of a law making definite both the duties of the assessor and the formula by which corporate excess should be assessed.

Railroads.

The commission reports[b] that it has endeavored to value railroad, express, sleeping-car, telegraph, telephone, and pipe-line companies at approximately 50 per cent of their actual value. Since 1908, the year before the creation of the tax commission, railroad assessments have increased more than $30,000,000, or over 59 per cent, although the increase in mileage during this period has not exceeded 75 miles. The commission has taken into consideration the intangible values in assessing railroads and has adopted the rule followed by the courts in railroad-rate cases. It has assumed that railroad property is worth as much for taxation purposes as it is worth for rate-making purposes.

Publicity.

By an initiative act passed at the September, 1914, election, the proceedings of each county board of equalization must be published, showing in detail all property upon which the assessment was increased or decreased by the board, the name of the owner, amount returned by the assessor on such property, and the assessment as fixed by the board; also of a list of all property placed upon the tax books by the board. Like publication must be made of the orders of the county court in all cases where the court changes the assessments so fixed.[c]

Bibliography.

The following is a list of the more important publications, in addition to the constitution, the statutes, and the court reports, of value in the study of corporate taxation in Arkansas:

First and second biennial reports of the Arkansas Tax Commission, 1909–10, 1911–12.

Report of the Secretary of State, 1909–1912.

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[a] Stats., secs. 6935–6937.

[b] Second Biennial Report Arkansas Tax Commission, 1910–1912, p. 32.

[c] Initiative act No. 2, September election, 1914. See Acts of Arkansas 1915, p. 1511.

LOUISIANA.

I. GENERAL VIEW.

Chief Features.

First. The application of the general property tax to all classes of taxable property.

Second. The supplemental taxation of practically all corporations, except railroads, by an "annual license" tax, levied upon a graduated gross receipts basis.

Third. The assessment of certain public-service corporations by a state board.

General Property Tax.

All property of domestic and foreign corporations, except that exempt under the constitution and the assets of banks whose shares of stock are assessed, is subject to the general property tax paid locally for state and local purposes. The operating property of certain public-service corporations is assessed by the State Board of Appraisers, and its valuations are applied locally for state and local taxation.

Taxes Supplemental to the General Property Tax.

All corporations herein treated, except railroads, sleeping-car, and certain manufacturing companies, are subject to graduated annual license taxes based upon gross receipts for state purposes. Similar taxes not exceeding those for the State may be imposed for local purposes.

Stockholders and Bondholders.

Only the stock of banks is in practice taxed in the hands of the shareholders; bonds are taxable to the individual owners.

Foreign Corporations.

Foreign, like domestic, corporations pay the general property tax upon property in the State. Certain classes pay also annual license taxes differing in rate from domestic corporations of the same class.

Administration.

The State Board of Appraisers, a composite board, composed of the auditor of public accounts, and one member from each congressional district elected for the term of four years by the governor, lieutenant governor, treasurer, attorney general, and secretary of state, assesses the property employed in railway, telegraph, telephone, sleeping-car, and express business throughout the State.[a] The board makes due apportionment to the different parochial and municipal authorities of the valuation of property assessed, and its valuation, in their separate jurisdictions.[b] The valuations put upon property for state taxation are required to be taken as proper valuations for local taxation in every subdivision of the State.[c] The State Board of Equalization, composed of seven members chosen by the voters, reviews and equalizes all other assessments between parishes, by classes, and in such manner as seems best to accomplish a just equalization of assessments throughout the State, preserving, however, the principle of separate rates to be added or deducted for each class of property.[d]

For each parish, except that of Orleans, one assessor is appointed by the governor and confirmed by the senate, for the term of four years.[e] In the parish of Orleans seven tax assessors are elected for four years, one from each municipal district of the city of New Orleans.[f] All taxable property, except that assessed by the State Board of Appraisers, is assessed locally.[g]

Parish taxes are levied by the police juries[h] and the levee commissioners may levy a tax on property within the portions of their districts subject to overflow.[i]

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[a] Constitution, Art. 226.

[b] Stats., p. 1593, sec. 6.

[c] Constitution, Art. 225.

[d] Laws 1906, p. 331, as amended by Laws 1910, p. 363.

The board of equalization in September, 1907, issued instructions with respect to an increase in the valuation of pine lands in the parish of St. Tammany for the purposes of the assessment for the year, based upon a classification graded according to the lumber-producing capacity of the land. The assessor was not informed of the basis upon which the classification was made, and increased the valuation (returned by the company) without regard thereto. The county board of reviewers then reduced the assessment, but not down to the amount the company had returned. The state board of equalization then ordered an increase in the valuations. The supreme court of Louisiana held that the increase was illegal and unauthorized and that the assessment and valuation made by the board of reviewers should remain undisturbed. Great Southern Lumber Co. *v.* State Board of Equalization et al., 130 La., 1048 (1912).

[e] Stats., p. 1544, sec. 2.

[f] Constitution, Art. 309.

[g] Stats., p. 1546, sec. 7.

[h] Ibid., p. 1268, sec. 2744.

[i] Constitution, Art. 239.

The police juries of the parishes except Orleans, and the city council of New Orleans, are constituted boards of reviewers in their respective parishes and city [a] and meet annually to hear all taxpayers contesting the valuations made by the assessor, and to adjust the items on the assessment roll. When changes suggested by the board are not concurred in by the assessor, the valuation of the assessor is final, unless on demand of the taxpayer an appeal be made to the court, where the reviewers appear for the taxpayer, and contend for the valuation suggested by them. [b]

In each parish, except that of Orleans, a sheriff, elected for a term of four years, is ex officio collector of state, parish, and all other, except municipal, taxes. [c] In the city of New Orleans a "state" tax collector is elected for four years. [d] These officials collect both general property and license taxes. [e]

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION. [f]

The elaborate provisions of the constitution as to taxation may be concisely summarized as follows:

The general assembly is forbidden to pass any special laws exempting property from taxation; [g] or to surrender or suspend the power to tax corporate property. [h] The taxing power may be exercised by the general assembly for state purposes, and by parishes and municipal corporations, under authority granted by the

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[a] Stats., p. 1556, sec. 23.

The supreme court of Louisiana holds that it has appellate jurisdiction of all cases where the legality of a tax levied by any municipal corporation is contested and that where a police jury adopted a budget based on a tax of 4 mills and subsequently levied a tax of 7 mills, the tax as to the excess of 3 mills was illegal. Howcott *v.* Smart, State and Parish Tax Collector et al., 130 La., 699 (1912).

[b] Stats., p. 1556, sec. 24.

[c] Constitution, Art. 119.

[d] Ibid., Art. 309.

[e] Stats., p. 1545, sec. 6.

Sources of revenue in Louisiana:

Municipal and local districts.—(*a*) General property tax; (*b*) business license taxes.

Parish (County).—(*a*) General property tax; (*b*) poll tax for schools; (*c*) business license taxes.

State.—(*a*) General property tax; (*b*) business license taxes; (*c*) inheritance tax.

[f] Constitution of 1913. The articles cited are identical in number and language in this and the constitution of 1898, but the amendments to the latter are included, and few additions are made. (See Comments.)

[g] Constitution, Art. 48, sec. 16.

[h] Ibid., Art. 228.

general assembly, for local purposes of a strictly public nature.[a] Taxation shall be equal and uniform throughout the territorial limits of the authority levying the tax, and all property shall be taxed in proportion to its value, to be ascertained as directed by law.[b] The valuations of property for the purpose of state taxation shall be taken as the proper valuation for local taxation.[b] The State Board of Appraisers assesses the property employed in railway, telegraph, telephone, sleeping-car, and express business throughout the State. The board consists of the state auditor, and one member from each congressional district elected for four years by the governor, lieutenant governor, treasurer, attorney general, and secretary of state.[c]

The general assembly may levy a license tax, and graduate the amount of tax to be collected from those pursuing the several occupations. All persons and corporations may be rendered liable to this tax except clerks, laborers, clergymen, school teachers, those engaged in mechanical, agricultural, and horticultural pursuits, and manufacturers other than those of distilled alcoholic or malt liquors, tobacco, cigars, and cottonseed oil. "Those engaged in the business of severing natural resources, such as timber and minerals, from the soil or water, whether they thereafter convert them by manufacturing or not, may also be rendered liable to a license tax, but in this case the amount to be collected may either be graduated or fixed according to the quantity or value of the product at the place where it is severed." "No political corporation shall impose a greater license tax than is imposed by the general assembly for state purposes. * * * The general assembly shall have authority to provide that municipalities levying license taxes equal in amount to those levied by police juries for

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[a] Constitution, Art. 224.

[b] Ibid., Art. 225.

Under an identical article in the constitution of 1879, the courts held: The taxation of corporate shares to the stockholders, without deducting the value of state and city bonds held by the corporation and exempt from taxation, does not conflict with this article. Parker *v.* Sun Ins. Co., 42 La. An., 1172 (1890).

A tax on the gross receipts of foreign insurance companies violates this article, because it is imposed only on a particular class, and it is not in proportion to the value of the property. It is not a license tax, or tax on capital stock; it is an "income tax." Parker *v.* North British, etc., Ins. Co., 42 La. An., 428 (1890).

The provisions of former constitutions "that all property shall be taxed" having always been construed and executed as not applying to state and municipal bonds, it will be presumed that the same language was employed in this constitution (1879) with like intent. State *v.* Board of Assessors, 35 La. An., 651 (1883).

[c] Constitution, Art. 226.

parochial purposes shall be exempted from the payment of such parochial licenses." [a]

Exemption from taxation includes all public property and that used for religious, educational, and charitable purposes. Exemption for ten years from date of completion is given to any railroad, extension or new line of such railroad, constructed and completed after January 1, 1905, and prior to January 1, 1909, but does not include structures of any kind or the lands upon which they are erected at terminal points, and for which franchises have been granted.[b] Domestic steamship companies, under certain conditions, are exempt for fifteen years, if organized prior to January 1, 1916. Exemption is given to the legal reserve of domestic life insurance companies; to loans upon real property in the State, and the mortgages to secure them; and to loans by life insurance companies upon the security of their policies, when the rate of interest charged does not exceed 5 per cent per annum discount. The capital, surplus, and personal estate of every corporation organized after November 23, 1912, for the sole purpose of lending money on country property in the State at a rate of interest not to exceed 6 per cent net to the borrower, shall be exempt from taxation for twenty years from the date of organization.[c] Exemption is also given to all money in hand or on deposit.[d] The capital stock, franchises, and property of all corporations constructing, owning, and operating within the State a combined system of irrigation, navigation, and hydroelectric power, is exempt from taxation for ten years from date of completion, provided not less than $3,000,000 shall have been expended in construction.[d]

Foreign corporations doing business in the State may be licensed and taxed by a mode different from that provided for domestic

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[a] Constitution, Art. 229. The object of the corresponding article in the constitution of 1879 was to take license taxation out of the rule of uniformity established for property taxation, and to authorize the legislature to graduate license taxes. Act 101, 1886, does so graduate it, by dividing insurance companies into several classes, according to the amount of premiums received. State *v.* Liverpool L. & Globe Ins. Co., 40 La. An., 463 (1888).

[b] Constitution, Art. 230. An amendment extending the date to January 1, 1917, within which a railroad might be completed, was rejected at the general election in 1912.

The exemption of railroads was intended to exempt from taxation only public service corporations whose existence would be beneficial to the whole State, but not to exempt street railways transporting passengers only, and having no connection with other public carriers. Shreveport Suburban Ry. Co. *v.* Hollingsworth, 131 La., 105 (1912).

[c] Constitution, Art. 230.

[d] Ibid., amendment adopted November, 1914.

ones, but such different mode of license must be uniform, upon a graduated system, and the mode of taxation equal and uniform as to all corporations in the same line or kind of business.[a]

The state tax for all purposes, including levees, shall not exceed in any year 6 mills on the dollar of assessed valuation, unless an additional tax is required under the terms of the article of this constitution relating to the public debt; nor the parochial or municipal tax, 10 mills, except for special taxes for permanent improvements.[b]

A special tax of one-fourth of 1 mill on the dollar on the assessed value of all property assessed for state taxation is levied to create a road fund. This tax is a part of the 6-mill tax authorized by this constitution.[c]

Beginning January 1, 1914, there is hereby levied on all property on which state taxes are levied, an annual tax of one and three-twentieths mills on the dollar of assessed valuation, to be included as a part of the state tax of 6 mills, and credited to a separate account to be known as the "State bond and interest tax fund."[d]

A levee system shall be maintained, and a tax not to exceed 1 mill may be levied annually on all property subject to taxation, to be applied exclusively to the maintenance and repair of levees.[e]

The general assembly may divide the State into levee districts, and provide for levee commissioners in said districts, who, for the erection and maintenance of the levees in their districts, may levy a tax not to exceed 10 mills on the taxable property situated within the alluvial portions of said districts subject to overflow. Should additional funds be needed, the rate of taxation may be increased, when the rate of increase and purpose have been submitted to a vote of the taxpayers of the district. The commissioners, when authorized by the state board of engineers, may permit any steam railroad corporation to construct and operate railroad tracks on the public levees.[f]

Except in the parish of Orleans, the sheriff shall be ex officio collector of state, parish, and all other taxes except municipal taxes.[g] In the city of New Orleans there shall be seven assessors who, together, shall compose the board of assessors for the parish

[a] Constitution, Art. 242.
[b] Ibid., Art. 232.
[c] Ibid., Art. 291.
[d] Ibid., Art. 324, sec. 4.
[e] Ibid., Art. 238.
[f] Ibid., Art. 239.
[g] Ibid., Art. 119.

of Orleans; and there shall be one state tax collector for the city of New Orleans.[a]

The authority conferred upon the city of New Orleans and the board of liquidation of the city debt to issue bonds and to levy and collect a special ad valorem tax of 1 per cent upon all the taxable property in that city for the payment of said bonds, is confirmed.[b]

STATUTES.[c]

General Property Tax.

Domestic and foreign corporations, unless exempt, pay locally the general property tax for state and local purposes.

Property is required by statute to be assessed at "actual value,"[d] but in practice it is assessed at about 50 per cent of such value.[e]

All property except that assessed by the state board of appraisers is assessed locally.[f] Assessments are made annually.[g]

The term "property" is defined, but the items of property enumerated are not classified by statute for assessment purposes.[h] It is stated, however, that real estate shall include buildings and all other improvements thereon, and that all crops whether gathered or not shall be considered as being attached to the realty while in first hands, and shall not be separately taxed while in possession of the lessor or his agent, and no property shall be taxed twice in the same year.[i]

Limitation on tax rates is provided by the constitution. For state purposes, the rate can not exceed 6 mills,[j] plus the rate of a special tax, computed annually by the state auditor of public accounts, sufficient in amount to meet payments on state bonded indebtedness.[k]

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[a] Constitution, Art. 309.

[b] Ibid., Art. 317.

[c] Except as otherwise indicated, references are to Wolff's Constitution and Revised Laws, 1904.

[d] Stats., p. 1555, sec. 20.

[e] Proceedings of 1907 conference, published in "State and Local Taxation," National Tax Association, p. 107, paper of Solomon Wolff.

[f] Stats., p. 1563, sec. 28, as amended Laws 1906, p. 104; and sec. 29.

[g] Ibid., p. 1556, sec. 22.

[h] Laws 1914, Act 281, p. 562.

[i] Stats., p. 1546, sec. 7.

[j] Constitution, Art. 232.

[k] Ibid., Art. 324, secs. 1, 2, 4.

The situs for taxation purposes of mortgages, notes, and indebtedness is the domicile of the owner,[a] and of tangible moveable property, "the parish or district where it is located." [b]

The value of rolling stock of railroads, distributed in other States usually on a mileage basis, in Louisiana is assigned to the parish wherein the principal office of the road is located.[c]

Credits other than loans upon Louisiana real estate are taxable, but no deductions are allowed for debts due.[d]

Exemptions from taxation are specifically set out in the constitution.[e]

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[a] Laws 1908, act 170, p. 230.

A Pennsylvania corporation solicits contracts in Louisiana, which are completed, however, only by acceptance in Pennsylvania, and takes notes in payment of these contracts, which notes are forwarded to the office of the corporation in another State. The situs of this indebtedness is in Pennsylvania, and the indebtedness is not taxable in Louisiana under the act providing that mortgage notes, indebtedness, and all evidence of indebtedness shall be taxable only at the situs and domicile of the holder or owner thereof. International Textbook Co. *v.* Fitzpatrick, 133 La., 102 (1913).

[b] Stats., p. 1549, sec. 11.

Where alcoholic liquors imported from a foreign country were stored in New York, their transmission to New Orleans was not an "importation" but a "transportation" within the Wilson Act, though the storing in New York was only temporary and the liquors were originally intended for New Orleans. State *v.* Frederick De Bary & Co., 130 La., 1090 (1912); affirmed, 227 U. S., 108 (1913).

Coal brought from another State in boats which are moored to the banks of a river in this State is no longer in transit, though not unloaded; it is thus subject to taxation in this State. That the coal was not consigned to any special individual does not affect the question; it suffices that the coal was in charge of one authorized to sell it, and who had sold part of it. Pittsburg, etc., Co. *v.* Bates, 40 La. An. 226 (1888). See also Brown *v.* Houston, 33 La. An., 843 (1881); Simmons Hardware Co. *v.* McGuire, 39 La. An., 848 (1887).

A judgment can not be assessed at the place where it is rendered; the proper place for taxation is where the owner resides. Debts have their situs at the domicile of the creditor. Meyer *v.* Pleasant, 41 La. An., 645 (1889); Barber Asphalt Paving Co. *v.* City, 41 La. An., 1015 (1889). Though the creditor be engaged in business in this State through an agent the same rule applies. Liverpool & L. & G. Ins. Co. *v.* Board, 44 La. An., 760 (1892).

A foreign life insurance company loaning money on the security of its policy holders is taxable on capital employed in such business. Metropolitan Life Ins. Co. *v.* New Orleans, 205 U. S., 395 (1907). See also New Orleans *v.* Stempel, 175 U. S., 309 (1899); Board of Assessors *v.* Comptoir National d'Escompte, 191 U. S., 388 (1903).

A construction outfit used in the State and taxed at its domicile in another State is taxable in Louisiana, for the prohibition as to double taxation does not apply to a tax paid in another State. Griggsry Construction Co. *v.* Freeman, Tax Collector, 108 La., 435 (1902).

[c] Interview with state tax officials, September, 1914.

[d] Laws 1914, act 281, p. 562; Constitution, Art. 230, as amended November, 1914.

[e] See p. 261, this report.

Annual License Tax.

Under an elaborate system of annual license taxes, Louisiana levies a gross-receipts tax upon almost all kinds of business and occupations. This tax is graduated by dividing each line of business into a number of classes, according to the amount of gross receipts, with a fixed sum to be paid as a license tax by each class.

An annual license tax is levied upon each person, firm, or corporation pursuing any trade, profession, vocation, calling, or business subject to licenses under article 229 of the constitution.[a] Any municipality or parochial corporation has the right to impose license taxes equal in amount to, but not greater, than the state license tax.[b] When any firm or company leases, operates, manages, or controls the business, franchises, or property of other firms or corporations, it pays a separate license for each business.[c] All gross receipts derived from any mercantile business or occupation, whether earned within or without the State, shall form the proper basis upon which all licenses shall be assessed and collected.[d] A person, firm, or company having more than one place of business pays a separate license for each place of business.[e]

The annual receipts as a basis for license taxes are those for the year for which the license is granted; "the standard for their estimation shall be prima facie of the preceding year if the business has been conducted previously by the same party. If the firm or company be new, the gross sales for the first two months shall be considered the basis, and six times that amount shall be estimated as the annual receipts of such business."[f]

Manufacturers, except those of distilled alcoholic or malt liquors, tobacco, cigars, and cottonseed oil, are specifically exempted from license taxation.[g]

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[a] Stats., p. 1674, sec. 1. See also p. 275 herein.

[b] Ibid., p. 1708, sec. 16.

[c] Ibid., p. 1708, sec. 17.

[d] Ibid., p. 1713, sec. 29.

[e] Ibid., p. 1713, sec. 30.

[f] Ibid., p. 1709, sec. 18.

[g] Constitution, Art. 229.

A sugar refiner is a manufacturer, and as such exempt from license taxation. State *v.* American Sugar Refining Co., 108 La., 603 (1902); overruling State *v.* American Sugar Refining Co., 51 La. An., 562 (1899).

A manufacturing company, making bags out of burlap in large quantities, is a manufacturer of bags, and exempt from license taxation under art. 229 of the constitution. State *v.* Bemis Brothers' Bag Co., 135 La., 397 (1914).

The following examples of license taxes give the number of classes under each head, and the minimum and maximum of the classes. The lowest tax is paid on any amount under the sum stated, the highest on anything over the maximum given, all being based upon gross receipts.

Manufacturers liable to license taxation, 25 classes, from $15 on $25,000 to $8,000 on $10,000,000;[a] mercantile, wholesale, 16 classes, from $50 on $250,000 to $3,500 on $7,000,000;[b] mercantile, retail, 24 classes, from $5 on $5,000 to $3,500 on $3,500,000;[c] transfer companies, 10 classes, from $30 on $25,000 to $400 on $500,000;[d] urban railroads, either horse, steam, or electric, operating within the limits of any city or town, three-eighths of 1 per cent of gross receipts, but in cities of less than 50,000 population, 3 classes, from $15 on $3,000 to $100 on $25,000;[e] lighting, telegraph,[f] telephone,[f] express,[f] distilling, brewing, tobacco manufacturing, and some other companies, from $20 on $15,000 to $6,250 on $2,500,000.[g]

Every person, firm or corporation engaged within the State in the business of severing natural products from the soil, including timber, minerals, oil and gas, sulphur, and salt, shall pay an annual license tax for state purposes equal to one-half of 1 per cent of the gross value of the total production, less the royalty interest accruing to the owner of the soil. The value of all products shall be computed at the place where they are severed or taken from the soil.[h] The parishes are authorized to levy a similar license tax on these industries, but not in excess of the state license.[i]

Railroads.

Railroads pay locally the general property tax for state and local purposes.[j] For purposes of taxation, railroad property may be classified as "railroad track," "real estate used for railroad purposes," "rolling stock," and "property not directly connected with the operation of railroads."[k]

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[a] Stats., p. 1675, sec. 3.
[b] Ibid., p. 1681, sec. 6.
[c] Ibid., p. 1682, sec. 6.
[d] Ibid., p. 1694, sec. 10.
[e] Ibid., p. 1696, sec. 10.
[f] Domestic corporations.
[g] Stats., p. 1697, sec. 11, as amended Laws 1914, p. 516.
[h] Laws 1912, act. No. 209, p. 437.
[i] Laws 1914, p. 605.
[j] Stats., p. 1541, sec. 1, as amended Laws 1914, act No. 281, p. 562.
[k] Interview with state tax officials, September, 1914.

The first three classes, which embrace all property directly connected with the operation of the road, are assessed by the State Board of Appraisers, based largely upon reports from the railroad companies.[a]

Railroad track is subdivided into main track, double track, spurs, sidetracks, and industrial switches. A valuation per mile is placed on each different kind of track, which multiplied by the number of miles of each situated in any taxing district gives the assessment of track therein. To this is added the value of the real estate used for railroad purposes in that taxing district.[b]

The various classes of rolling stock, such as locomotives, passenger cars, etc., owned by each company, are valued separately, and when the road extends into another State, the portion of the value of the rolling stock assignable to Louisiana is that percentage of the aggregate value of all cars which the length of track in Louisiana over which they travel bears to the total length of the track wherever traveled.[c]

The valuation of rolling stock or of terminal property is not distributed on a mileage basis, but rolling stock is assigned to the parish in which the road has its principal office, and terminal property to the parish in which such property is located.[d]

Property not directly connected with the operation of the railroad is assessed locally in the parish wherein it is situated.[e]

Each railroad company is required to report annually to the State Board of Appraisers, in addition to certain financial data, the number of miles and value of the various kinds of track, rolling stock, and real estate used in connection with its operations.[e]

Express, Sleeping-car, Telegraph, and Telephone Companies.

Express, sleeping-car, telegraph, and telephone companies pay locally the general property tax for state and local purposes.[f]

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[a] Stats., p. 1592, sec. 1.

Thus the Louisiana Railway & Navigation Co. reported 196.12 miles of main track at $8,000 per mile, and 77.55 miles of sidetrack at $2,000 per mile. The state board of appraisers increased the main track valuation to $8,500 per mile, and a portion of the sidetrack was assessed at $4,250 per mile and the remainder at $2,125 per mile. The valuation reported for rolling stock, $628,750, was not changed. Interview with state tax officials, September, 1914, and "Report made by the State Board of Appraisers for the year 1914," p. 15.

[b] Report of State Board of Appraisers, 1914, pp. 6–50.

[c] Stats., p. 1563, sec. 29.

[d] Interview with state tax officials, September, 1914.

[e] Stats., p. 1593, secs. 4, 6.

[f] Ibid., p. 1541, sec. 1, as amended Laws 1914, act No. 281, p. 562.

In addition, companies of these classes, except sleeping-car companies, pay locally, license taxes for both state and local purposes.

All property used in the operation of these companies is assessed by the State Board of Appraisers.[a]

Express companies are assessed "for the use value of the property employed in the conduct of the companies' business (such as office furniture, horses, wagons, etc.) and for their traffic agreements." [b]

Sleeping-car companies are assessed on the value of cars and other personal property within the State. The value of cars is determined by taking the proportionate value of the total number of cars of each class used on all railroad lines running into the State and reducing it to an average valuation per car. The proportionate value is based on the percentage which the total number of miles of main track traveled in the State bears to the aggregate number of miles of main track wherever traveled.[c]

The property of transmission companies for assessment purposes may be classified thus: Telegraph property as, "poles," "wires," and "cable;" and telephone property as "exchanges," [d] "poles," "copper wire," and "iron wire."

The value of each item falling under these classes is reduced to a valuation per mile, which, when multiplied by the number of miles of route or of wire in a parish, gives the assessable value of such item therein. Other property necessary for the conduct of the business, such as horses, wagons, office furniture, etc., is also assessed by the state board of appraisers, and its valuation is assigned to the parish where located.[e]

Each company of the classes above mentioned reports annually the value of its property by items, giving location, etc., and such other data as the board may require.[e]

The license taxes paid locally for state purposes by these classes of companies are as follows: If domestic corporations, they are

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[a] Stats., p. 1592, sec. 1.

[b] Report of State Board of Appraisers, 1914, pp. 76–86.

[c] Stats., p. 1563, sec. 29.

It is within the power of a State to tax sleeping cars and other rolling stock of a foreign corporation, employed in interstate commerce, in the ratio which the number of miles of line within the State bears to the total number of miles of the whole line. Board of Assessors *v.* Pullman Palace Car Co., 60 Fed. Rep., 37 (1894).

[d] Exchanges are valued according to the number of subscribers served, thus when the number exceeds 500, it is multiplied by $65; and when less than 500 it is multiplied by $55. Interview with state tax officials, September, 1914.

[e] Stats., p. 1593, sec. 6.

graded in 20 classes on the basis of gross annual receipts, ranging from a tax of $6,250 on $2,500,000 and over, down to $20 on $15,000 or less.[a] If foreign, express companies pay $10 upon each $1,000 of gross earnings from business done wholly within the State, including the pro rata of interstate business earned within the State; telegraph companies, $3 upon each $100 of gross receipts from business done wholly within the State; and telephone companies, $5 upon each $1,000 of gross receipts from all business done within the State.[b]

Additional licenses for local purposes may be levied by each parish and by each municipality through which the lines or routes extend, and these sometimes are equal in amount to the state licenses. Thus in New Orleans telegraph, telephone, express, and certain other classes of companies pay the same license taxes for municipal as for state purposes.[c] In Baton Rouge these companies are divided into five classes, and pay from $15 on $15,000 gross receipts or less, to $100 on $50,000 or more.[c]

Public-Utility Companies.

Street railway, electric light, waterworks, and ferry companies pay locally the general property tax for state and local purposes on all property, including franchise, namely, the franchise right to use public streets, etc. In addition they pay locally both state and local license taxes.

Assessment of the physical property is by parish assessors, and franchises by police juries, except in the parish of Orleans, where a board of assessors value both classes of property for taxation purposes.[d]

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[a] Stats., p. 1697, sec. 11, as amended Laws 1914, p. 516.

[b] Ibid., pp. 1714–1715, secs. 3, 4, 6.

[c] License Ordinances of New Orleans, 1913, pp. 17, 24, and Tax Ordinance for 1914, passed Dec. 30, 1913; Baton Rouge State Times, Jan. 7, 1914.

A municipal license upon express companies similar in amount and basis to the state license was held void as to the part levied upon the pro rata of interstate business earned within the State. Hunter *v.* Wells Fargo Express Co., 134 La., 358 (1914).

[d] Constitution, Art. 309.

The assessment of the value of a franchise measured chiefly by the earning capacity of the corporation is a proper assessment. Crescent City R. R. Co., *v.* City of New Orleans and Board of Assessors, 44 La. An., 1057 (1892).

The language used is "a basis" not "the basis." Starting with the earning capacity as a basis, those making assessments are expected to consider other matters having a bearing upon the value of a franchise, other facts and circumstances tending to augment or diminish such value. From the total assessment of plaintiff's property, corporeal and incorporeal, the board deducted the value of its tangible property, leaving the difference as the assessed value of its franchise. Crescent City R. R. Co. *v.* Board of Assessors et al., 51 La. An., 335 (1899).

The method of assessing franchises may vary with the different parishes, but in the parish of Orleans the gross earnings are capitalized at 32 per cent, and from the result so found is deducted the assessed value of both real and personal property.[a]

Like the license taxes applicable to telegraph, telephone, and express companies, public-utility companies of the above-named classes are, in addition to state license, subject to licenses for both parish and municipal purposes, and these are sometimes equal in amount to the state licenses.

Each company of the classes above mentioned annually reports detailed information necessary to assist the assessing authority in arriving at the valuation of its property.[b]

Mercantile, Mining, and Manufacturing Companies.

Mercantile, mining, and manufacturing companies pay locally for state and local purposes the general property tax on all property. In addition mercantile and mining companies, and companies engaged in the manufacture of distilled, alcoholic, or malt liquors, tobacco, cigars, and cottonseed oil,[c] pay locally annual license taxes based upon gross receipts for both state and local purposes.

Mercantile companies are assessed upon their stock in trade, money at interest, open accounts, credits, etc., so that the assessments will represent in the aggregate a fair average on the capital employed in the business of the party assessed.[d]

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[a] Interview with member of board of assessors, parish of Orleans, September, 1914.

[b] Stats., p. 1563, sec. 28, as amended Laws 1906, p. 104.

[c] Constitution, Art. 229; Stats., pp. 1675, 1681, 1682, 1694, 1697, as amended Laws 1914, p. 516.

[d] Stats., p. 1546, sec. 7; Constitution art. 230, as amended Nov., 1914.

Plaintiffs, residents of New York City, carried on a brokerage business in the city of New Orleans through a resident agent. The supreme court of Louisiana held that the average capital employed in such business might be taxed in the State of Louisiana and all moneys arising from the business might be valued for the purpose of arriving at the amount of capital actually employed therein. The circumstance that all money received by the agent was forthwith remitted to the plaintiffs in New York City did not affect the amount of capital, in one form or another, actually employed in the conduct of the business in the city of New Orleans.

The plaintiffs made no return of their property for assessment and were therefore estopped to contest the correctness of the assessment list filed by the assessor (sec. 25, act 170, 1898). The assessment of $50,000 to plaintiffs' brokerage firm under the head of "money in possession," was held to represent the average cash capital actually employed in the business (sec. 7, act 170, 1898). Bertron, Griscom & Jenks *v.* City of New Orleans et al., 131 La., 73 (1912).

Manufacturers of exempt and nonexempt articles, and dealers therein, must keep separate accounts of the two, and make annual reports of the several amounts, that the assessor may readily determine the respective amounts of exempt and taxable property.[a]

Stockholders and Bondholders.

The enumeration of kinds of property upon which taxes are to be levied includes: Rights, credits, bonds, and securities of all kinds; including shares of stock in national and other banking companies.[b] In practice only stock in banks is taxed,[c] but all corporation bonds are taxable unless secured upon real estate in the State.[d]

Foreign Corporations.

Foreign corporations pay the general property tax upon property within the State. An annual license tax also is levied upon the following seven classes of foreign corporations, viz: Banks, telegraph companies, telephone companies, electric light or power companies, express companies, companies selling mineral oils whether crude or refined, and those dealing in fresh, cured, salted, smoked or canned meats.[e]

III. FINANCIAL RESULTS.

Classification of Revenue.

The proportion of state taxes for state purposes derived from corporations for 1912 was 17 per cent.

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[a] Stats., p. 1563, sec. 28, as amended Laws 1906, p. 104.

[b] Ibid., pp. 1542–43, sec. 1, as amended Laws 1914, act No. 281, p. 562.

[c] Under the present revenue laws of this State shares of stock in all corporations except banking corporations are not taxable. Under the act of 1880 the shareholders of all corporations were taxed on their shares. Under the act of 1890 only the shares of incorporated banks are taxable, and all other corporations are taxed on their property in the same manner as individuals. Section 28 of the revenue acts of 1890 and 1898 includes all corporations, other than banking concerns. Chassaniol et al. *v.* Board of Assessors, 120 La., 778 (1908).

"Shares of stock in corporations are legally property in the hands of the shareholders, and the constitution seems to design their taxation as such. But the legislature as decided by the supreme court in the Chassaniol case a few weeks ago does not provide for their assessment; hence they go untaxed. The court calls this legislative omission." Report of Tax Commission, 1908, p. 35.

[d] Constitution, art. 230.

[e] Stats., pp. 1714–1715, secs. 2–8.

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED DECEMBER 31, 1912.[a]

Total state receipts, all sources		$5,040,914.35
State taxes from corporations:		
Railroads[b]	$298,882.58	
Street railway companies[b]	6,680.33	
Sleeping-car companies[b]	2,117.60	
Express companies[b]	2,152.75	
Telegraph companies[b]	5,874.15	
Telephone companies[b]	19,182.23	
Steamboat companies[b]	3,151.56	
Franchises[b]	53,080.46	
Manufacturing companies[b]	17,774.33	
Cotton compresses and oil mills[b]	7,854.10	
Sugar refineries[b]	11,077.45	
Oil, gas, and mining companies[b]	75,321.51	
Banks[b]	117,736.11	
Miscellaneous corporations[b]	48,471.84	
Insurance companies	16,940.18	
Corporation fees	25,807.30	
Total state taxes from corporations		712,104.48
Other taxes:		
Inheritance tax	207,003.84	
Licenses[c]	970,603.12	
General property tax (excluding $669,357.53 above estimated)[d]	2,192,490.37	
Total state taxes not from corporations		3,370,097.33
Total state taxes, all sources		4,082,201.81
Receipts from sources other than taxes:		
Good-road tax by parishes	85,463.16	
Penitentiary receipts	387,891.60	
Interest—Port of Orleans	175,000.00	
Interest on deposits	64,568.80	
Interest on bonds	67,156.40	
Land sales	48,841.55	
Redemption of tax-sale property	2,493.43	
Fines, fees, etc.	49,236.02	
Miscellaneous	78,061.58	
Total receipts from sources other than taxes		958,712.54
Total state receipts, all sources		5,040,914.35

[a] Reports of State Auditor, 1912–13; State Board of Equalization, 1911; State Board of Appraisers, 1911.

[b] Estimated by applying the state rate of 5 mills together with Confederate veterans tax of 0.2 of a mill and the good-roads tax of 0.25 of a mill (Auditor Report 1912, page v and Laws 1910) upon the valuations shown in Reports of State Board of Appraisers and State Board of Equalization, 1911.

[c] Part of this comes from corporations, but the amounts, which are collected locally, are not itemized.

[d] Part of this comes from local taxation of corporations, but it is practically impossible to ascertain the amount thus received, except the amounts above estimated, which are not included in this item.

IV. COMMENTS.

Historical.

The legal system of the thirteen original States, and of the four—Vermont, Kentucky, Tennessee, and Ohio—admitted before the Louisiana Purchase on April 30, 1803, was built upon the foundation of the common law of England. Louisiana was settled by the French in 1699. Ceded to Spain, the Spanish took possession in 1769, retaining only the Code Noir of Louis XIV of the French system, and enacting the Code O'Reilly, a compilation of the laws then prevailing throughout the Spanish-American colonies. The laws of both Spain and France were founded upon the Civil or Roman Law, as are those of practically every country in western Europe except Great Britain.

In 1808 a digest of laws was reported, bringing the French and Spanish laws into harmony with those of the United States, and this code, based on the Code Napoleon, with later revisions, was adopted in 1825 as the Civil Code of Louisiana.

The terms "parish" for county, and "police juries" for county commissioners, are used in the laws of Louisiana.

The first constitutional convention, in December, 1811, passed an ordinance providing that "no taxes shall be imposed on lands the property of the United States;" and "that the lands belonging to the citizens of the United States residing without the State of Louisiana shall never be taxed higher than the lands belonging to persons residing therein." The constitution of 1812 provides that the existing laws of this Territory shall continue to be in force until altered or abolished by the legislature.

Constitutional Taxation.

The first constitution of Louisiana, adopted in 1812, remained in force for 33 years, until 1845, but since the latter date seven constitutions have been adopted, the last dating from November 22, 1913. In them may be followed the growth of constitutional legislation on the subject of taxation, which now, because of numerous limitations and restrictions, hampers reforms and progress in so many States.

In the constitution of 1812 no mention of taxation was made. That of 1845 provided that all bills for raising revenue should originate in the house of representatives (art. 32); other provisions were: "Taxation shall be equal and uniform throughout the State; after the year 1848 all property on which taxes may be levied, in

this State, shall be taxed in proportion to its value, to be ascertained as directed by law; no one species of property shall be taxed higher than another species of property of equal value, on which taxes shall be levied; the legislature shall have the power to levy an income tax, and to tax all persons pursuing any occupation, trade, or profession." (Art. 127.)

These provisions were reenacted in the constitution of 1852, and the convention of 1861 made no change therein. In 1864 the exemption of school, church, and charitable property was added; and it was provided that income and license taxes should be levied, and all tax on income was required to be pro rata on the amount of income or business done. (Art. 124.) In 1868 a poll tax was imposed, and tax deeds were declared to be prima facie evidence of valid sales.

The constitution of 1879 contained 17 articles under the head of "Revenue and Taxation," all of which were reenacted in the constitution of 1898, which added the exemption for ten years of newly constructed railroads, and an article creating the State Board of Appraisers.

Previous to the constitution of 1898 the real estate of railroad, canal, transportation, and telegraph companies was assessed and taxed locally, and the rolling stock was assessed and taxed at the domicile or principal office of the company.[a] In 1888 provision was made to effect uniform valuations of the assessments against railroad, telegraph, and telephone property throughout the State by providing for a review thereof by a board of commissioners composed of a representative from each county in which such property was located.[b] Since 1898 [c] the property of railroad, telegraph, telephone, sleeping-car, and express companies has been assessed by the State Board of Appraisers.

In the license tax act of 1886, provision was made for the collection of supplemental state and local taxes from street railroad, telegraph, telephone, public-utility, and certain manufacturing companies. These taxes were graduated according to gross receipts and ranged from $15 to $3,500 for each city in which the companies conducted business.[d]

In 1898 [e] the license tax on street railroads in cities of 50,000 inhabitants or over was changed to three-eighths of 1 per cent

[a] Laws 1882, p. 129.
[b] Laws 1888, p. 151.
[c] Constitution, 1898, sec. 226.
[d] Laws 1886, p. 175; laws 1890, p. 189.
[e] Laws 1898, Act 171.

of gross receipts, and foreign telegraph, telephone, and express companies were taxed as described in the law now in force.[a]

The constitution of 1879 exempted from taxation and license for twenty years the property of certain manufacturing enterprises,[b] and the constitution of 1898 continued the exemption of these enterprises from parochial and municipal taxation until 1910.[c] Newly constructed railroads were given ten years exemption by the constitution of 1898.[c]

Over eleven million dollars of the bonded debt of the State matured on January 1, 1914, and it was found in 1913 that under the restrictions of the constitution the legislature could do nothing toward refunding this debt. A special session of the legislature was convened, and it authorized an election for a constitutional convention with power to frame and adopt, without submission to the people, a new constitution, but prohibited any change in a number of existing provisions and subjects. The convention elected sat for 12 days, November 10–22, and declared the new constitution in effect from and after November 22, 1913. Provision was made for refunding the state debt coming due, and for enlarging the powers of the sewerage and water board of the city of New Orleans. Amendments to the constitution of 1898, which had been adopted since that date, were incorporated, and a few other additions and changes were made, but for the most part the preceding constitution was reenacted, the language and numbers of the articles remaining unchanged.

In the Report of the Tax Commission of Louisiana, made in 1908 (p. 36), the Hon. M. H. Carver writes: "There is little necessity for putting anything at all in the constitution about taxation, and some distinguished authorities hold that everything on the subject in a constitution is dangerous. * * * Certainly we ought not to embed any tax system in the constitution. Conditions change and needs change with them."

License Taxes.

The license tax system, so important and general in many of the Southern States, is an ancient one in Louisiana. On February 22, 1770, Captain-General O'Reilly assigned to New Orleans its first regular revenue, by laying annual taxes of fixed amounts upon taverns, hotels, inns, boats of over and of under 200 tons, one dollar a barrel of spirituous liquor, and a tax upon butchers.

[a] Laws 1898, Act 127. [b] Constitution, 1879, sec. 207. [c] Constitution, 1898, sec. 230.

The first general revenue act of the State, approved March 27, 1813, provided for the levying of licenses, and divided those liable into 14 classes.

In regard to license taxes, the Tax Commission reporting in 1908 said: "The commission desires to go on record as opposed to the principle of license or occupation taxes on ordinary pursuits as a permanent source of revenue. * * * Such taxes, by increasing the cost of doing business, lessen the competition, which is unsound policy. In addition to this, there is no form of tax which provokes such a flood of perjury as accompanies the levy and collection of these taxes." [a]

Levee Taxes.

The extra tax burden imposed for the purpose of confining the Mississippi River and tributaries within their banks when flood conditions prevail is particularly noticeable in studying the taxation system of Louisiana, since in that State the localities immediately affected are aided by a state-wide tax of seventeen-twentieths of a mill on all taxable property, while in other States bordering the lower Mississippi no outside relief is afforded the taxpayers of districts which are subject to devastation from floods. The granting of state relief in Louisiana, however, in addition to the special taxing of the property affected, may be due to the extent and importance of the area of land in danger. The total length of the levee lines in Louisiana, including a small part in Arkansas, is 1,636.5 miles. The territory involved is divided into 17 levee districts, the property within which for the year 1911 bore both general and special taxes on a total assessment of approximately $319,000,000.[b] Each, except the levee district of Orleans, is authorized to levy a 10-mill tax upon all property within its limits. The tax imposed by the levee district of Orleans, however, is limited to 1 mill. In addition, most of the districts have power to impose "forced contributions" on railroads, on acreage, and on the agricultural products raised within their borders, and some impose a tax on oysters.

The rates applicable for "forced contributions" vary. For example, 14 districts are authorized to levy acreage taxes, and the rates of these range from 2½ cents to $1 per acre; all but two, however, levy a tax of 5 cents or less; 15 districts levy taxes on railroads ranging from $30 to $100 per mile, or an average district

[a] Report of the Tax Commission of Louisiana, 1908, p. 13.
[b] Report of Board of State Engineers, 1910–12, pp. 12, 20.

tax of about $65 per mile; 13 districts tax cotton at from 25 cents to $1 per bale; and 5 districts tax sugar at from 10 to 15 cents per barrel. Molasses, rice, oysters, and oranges are also among the products taxed for levee purposes.[a]

Attempted Tax Reform.

The agitation of the subject of tax reform in Louisiana began in 1906, and a tax commission was appointed, whose suggestions were reported in 1908. No action was taken until 1912, when a new tax commission was appointed, which drew up and recommended to a special session of the legislature a complete system of tax reform, in eight amendments to the constitution. The reform was based on the two principles of the segregation of the sources of revenue for state taxation, and complete home rule in local taxation. The amendments were adopted by the legislature and ordered to be submitted to the vote of the people at the election in November, 1912. The measures rejected included those permitting a classification of property; separating the sources of state and local revenue; creating a state tax commission; and establishing various exemptions from taxation. Those accepted added a few exemptions and some minor local regulations, but made none of the changes in the system of taxation, which, for six years, had been labored for with intelligent ardor.

Constitutional Amendments of 1914.

The following constitutional amendments relating to taxation, proposed by the legislature of 1914, were adopted at the November election of that year:

(*a*) Requiring foreign banking corporations to pay to the State a yearly license tax of $250 and 2½ per cent on gross interest earned on all money loaned and a like tax to the municipality or parish.[b]

(*b*) Exempting from taxation all money in hand or on deposit.[c]

(*c*) Exempting from taxation for ten years from date of completion the capital stock, franchises, and property of all corporations constructing, owning, and operating within the State a combined system of irrigation, navigation, and hydroelectric power,

[a] Report of Board of State Engineers, 1910–12, pp. 20–59.
[b] Laws 1914, p. 96.
[c] Ibid., p, 125.

provided that not less than $3,000,000 shall have been expended in the construction.[a]

Bibliography.

The following is a list of the more important publications, in addition to the constitution, the statutes, and the court reports, of value in the study of corporate taxation in Louisiana:

Report of Tax Commission of Louisiana, 1908.
Report of State Board of Appraisers, 1914.
Biennial Report of Auditor of Public Accounts, 1912—1913.
Proceedings of the National Tax Association, 1909 and 1912.
License Ordinances, City of New Orleans, 1913.
Report of Board of State Engineers, 1910–1912.

[a] Laws, 1914, p. 205.

OKLAHOMA.

I. GENERAL VIEW.

Chief Features.

First. The application of the general property tax to all property, supplemented with respect to some classes of corporations by production, gross receipts, and license taxes.

Second. The assessment of public-service corporations by a State Board of Equalization.

General Property Tax.

Domestic and foreign transportation, transmission, mercantile, and manufacturing corporations pay locally the general property tax for state and local purposes.

Property of public service corporations is assessed by the State Board of Equalization. All other property is assessed locally.

Taxes Supplemental to the General Property Tax.

In addition to the general property tax, certain classes of corporations are required to pay the following gross-receipts, production, or license taxes:

Telephone, pipe-line, electric light, gas, heat, waterworks, and power companies, operating wholly within the State, pay a tax to the State for state purposes on gross receipts.

Oil, natural gas, and mining corporations pay a tax to the State for state purposes on the gross value of their product, less the value of royalties paid to Indians.

Mercantile and manufacturing corporations pay to the State for state purposes the corporation license tax.

Stockholders and Bondholders.

Shares of stock of domestic and foreign corporations of the classes herein treated are taxable to holders, but in practice the shares of domestic companies are not taxed. Bonds are taxable to the holder as personalty.

Foreign Corporations.

Foreign mercantile, manufacturing, transportation, and transmission corporations, except as noted herein, are taxed practically in the same manner as similar domestic corporations.

Administration.

The governor, state auditor, state treasurer, secretary of state, attorney general, state examiner and inspector, and president of the board of agriculture constitute the State Board of Equalization. This board, ex officio in character, is authorized to examine the various county assessments and to equalize, correct, and adjust the same as between the counties;[a] to assess the property of public service corporations;[b] to compute the amount of the state levy;[c] and to provide the necessary assessment blanks for local assessors.[d] It has statutory authority[b] to compel the attendance of witnesses, to cause production of papers, and to enforce its orders.

A county assessor elected biennially in each county is authorized to assess real and personal property annually, to gather statistical information, and to keep a land record showing valuations and ownership. He is required to deliver all lists of property to the county board of equalization for its use in adjusting and equalizing valuations.[e]

The county board of equalization, consisting of the county commissioners, is authorized to equalize, correct, and adjust the assessment rolls of the county between the different townships by increasing or decreasing the aggregate assessed value of the property or any class thereof, so as to conform to its fair cash value.

Appeals may be taken from the county board of equalization to the county court, and from the state board of equalization to the supreme court of the state.[f]

The general property tax is collected locally by county treasurers;[g] the gross receipts, production and corporation license taxes are collected by the state treasurer.[h] The corporation license tax payable by mercantile and manufacturing corporations is determined by the State Corporation Commission.[i]

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[a] R. L., sec. 7373.
[b] Ibid., sec. 7348.
[c] Ibid., sec. 7374.
[d] Ibid., sec. 7319.
[e] Laws 1911, chap. 152.
[f] R. L., secs. 7367, 7368.
[g] Ibid., sec. 1732.
[h] Ibid., secs. 7461, 7464, 7540.
[i] Ibid., secs. 7538–7549.

Sources of revenue in Oklahoma:

Municipal and local districts.—(*a*) General property tax; (*b*) poll tax; (*c*) business taxes and licenses; (*d*) fines, fees, etc.

County.—(*a*) General property tax; (*b*) fines, fees, etc.

State.—(*a*) General property tax; (*b*) corporation taxes; (*c*) inheritance tax; (*d*) fines, fees, etc.

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION.[a]

"Taxes shall be uniform upon the same class of subjects." [b]

"All property which may be taxed ad valorem shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale." [c]

"The legislature shall have power to provide for the levy and collection of license, franchise, gross-revenue, excise, income, collateral and direct inheritance, legacy, and succession taxes; also graduated income taxes, graduated collateral and direct inheritance taxes, graduated legacy and succession taxes; also stamp, registration, production, or other specific taxes." [d]

"The State may select its subjects of taxation, and levy and collect its revenues independent of the counties, cities, or other municipal subdivisions." [e]

"Nothing in this constitution shall be held, or construed, to prevent the classification of property for purposes of taxation; and the valuation of different classes by different means or methods." [f]

"All taxes collected for the maintenance of the common schools of this State, and which are levied upon the property of any railroad company, pipe-line company, telegraph company, or upon the property of any public service corporation which operates in more than one county in this State, shall be paid into the common-school fund and distributed as other common-school funds of this State." [g]

"There shall be a State Board of Equalization consisting of the Governor, State Auditor, State Treasurer, Secretary of State, Attorney General, State Inspector and Examiner, and President of the Board of Agriculture. The duty of said Board shall be to adjust and equalize the valuation of real and personal property of the several counties in the State, and it shall perform such other duties as may be prescribed by law, and they shall assess all railroad and public service corporation property." [h]

"Except as herein otherwise provided, the total taxes on an ad valorem basis, for all purposes, state, county, township, city or town, and school district, shall not exceed in any one year 31½ mills on the dollar, to be divided as follows:

"State levy, not more than 3½ mills; county levy, not more than 8 mills: Provided, That any county may levy not exceeding

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[a] Except as otherwise indicated, references are to the constitution of the State, as contained in Harris and Day's Revised Laws, 1910.

[b] Constitution, 1907, Art. X, sec. 5.

[c] Ibid., sec. 8.

[d] Ibid., sec. 12.

[e] Ibid., sec. 13.

[f] Ibid., sec. 22.

[g] Ibid., sec. 12a, as adopted Aug. 5, 1913.

[h] Ibid., sec. 21.

2 mills additional for county high school and aid to the common schools of the county; * * * township levy, not more than 5 mills; city or town levy, not more than 10 mills; school district levy, not more than 5 mills * * *: Provided, That the * * * rate for school purposes may be increased by any school district * * * not to exceed 10 mills on the dollar valuation, on condition that a majority of the voters thereof voting at an election, vote for said increase."[a]

"For the purpose of erecting public buildings in counties, cities, or school districts, the rates of taxation * * * may be increased" not to exceed 5 mills by a vote of the people.[b]

"The legislature may authorize county and municipal corporations to levy and collect assessments for local improvements upon property benefited thereby, homesteads included, without regard to a cash valuation."[c]

"The legislature shall not impose taxes for the purpose of any county, city, town, or other municipal corporation, but may by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes."[d]

"All property used for free public libraries, free museums, public cemeteries, property used exclusively for schools, colleges, * * * religious and charitable purposes," all public property, household goods of the heads of families, tools, implements, and live stock employed in the support of the family, not exceeding $100 in value, growing crops, and all personal property not to exceed $200 in value of ex-Union and ex-Confederate soldiers who are the heads of families, and the property owned by orphan homes, also property exempted by Indian treaties, or Federal laws, are exempt from taxation.

"The legislature may authorize any incorporated city or town, by a majority vote of its electors voting thereon, to exempt manufacturing establishments and public utilities from municipal taxation, for a period not exceeding five years, as an inducement to their location."[e]

"All bills for raising revenue shall originate in the House of Representatives. The Senate may propose amendments to revenue bills. No revenue bill shall be passed during the five last days of the session."[f]

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[a] Constitution, Art. X, sec. 9.
[b] Ibid., sec. 10.
[c] Ibid., sec. 7.
[d] Ibid., sec. 20.
[e] Ibid., sec. 6.
[f] Ibid., Art. V., sec. 33.

STATUTES.[a]

General Property Tax.

All domestic and foreign corporations, unless exempt, pay locally the general property tax for state and local purposes.[b]

The statute requires the assessment of property at its fair cash value.[c] In practice, however, property is usually assessed at about 50 per cent of fair cash value.[d]

For taxation purposes, the term real property as defined by statute includes land, buildings, structures, improvements, fixtures, mines, minerals, quarries, and trees thereon, and all rights or privileges belonging thereto.[e] Personal property as defined by statute includes chattels, moneys, credits, shares of stock, bonds, implements, machinery, goods, wares, and merchandise.[f]

"Money" is defined as meaning gold and silver coin, treasury notes, bank notes, and other forms of currency in common use.[g]

The tax rate is limited by the constitution to 31½ mills for all purposes and to 3½ mills for state purposes.[h]

The situs of personal property of corporations operating in more than one county is generally the place of its location, but the valuation of certain personal property of public-service corporations is distributed on a mileage basis.[d]

Exemptions include public property and property used for public cemeteries, religious, charitable, scientific, educational, and benevolent institutions, the property of orphan homes, shares of building and loan associations and their notes and mortgages when given by members upon taxable real estate located in Oklahoma.[i]

Corporation License Taxes.

Corporations, except public service, oil, natural gas, and mining corporations, pay to the State for state purposes an annual license

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[a] Except as otherwise indicated, the references herein are to Harris and Day's Revised Laws, 1910.

[b] R. L., sec. 7302.

[c] Ibid., sec. 7307. Estimated at fair voluntary sale.

[d] Interview with state tax officials, September, 1914.

[e] R. L., sec. 7304.

The legislature has not selected oil and gas leases, as such, as subjects of taxation, nor has it provided for a severance of the various interests which may be held in real property. In re Indian Territory Illuminating Oil Co., 43 Okla., 307 (1914).

[f] R. L., sec. 7305.

[g] Ibid., sec. 7306.

[h] Constitution, Art. X, sec. 9.

[i] R. L., sec. 7303.

fee. The rate for domestic corporations is 50 cents upon each $1,000 of authorized capital stock, and for foreign corporations $1 upon each $1,000 of capital stock employed in business in the State.[a]

The amount of corporation license tax payable by these classes of foreign corporations is determined by obtaining that proportion of the paid-up capital stock which is reflected by the average of (*a*) the percentage of the total business represented by the amount of business transacted within the State; and (*b*) the percentage of the total value of property owned represented by the value of property held within the State.[b]

Public service corporations, as such, are not subject to the corporation license tax, but when engaged in enterprises other than those of a quasi-public character, such as electric light companies which manufacture ice, they are required to segregate their capital for the purpose of paying the tax on a portion of their capital.[c]

The registration fee paid for incorporation or upon entering the State to do business is in lieu of this tax for the first fiscal year.[d]

Steam and Street Railroads.

Railroad companies, domestic and foreign, pay locally for state and local purposes the general property tax on all property, valued as a going concern.

For assessment purposes, the physical property of railroads in Oklahoma may be classified as "main tracks" and "sidetracks, buildings, and station grounds."

The valuation of main track, which includes the value of right of way, rails, superstructure, rolling stock, and all other property not classified as "sidetracks, buildings, and station property" is apportioned on the mileage basis to each minor taxing subdivision of the State wherein any main track is located. The value of side-

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[a] R. L., secs. 7538–7549.

[b] The practical operation of the method above described is illustrated by the following example: "Assuming $100,000 to be the total capital stock; $240,000 to be the total business transacted during the year by a foreign corporation, and $50,000 to be the total value of property owned by the corporation; one-half the property being in Oklahoma, and one-fourth the volume of business being transacted in Oklahoma, the figures and formula would be: 50+25=75 per cent÷2=37½ per cent of $100,000=$37,500=the amount upon which such corporation would pay $1 per $1,000." Letter, chairman corporation commission, Nov. 24, 1914.

[c] Interview with state tax officials, September, 1914.

[d] R. L., sec. 7540.

tracks, spurs, terminals, buildings, and other property not intimately connected with the operation of main track is assigned to the taxing district where located.

Assessments of all railroad property are made by the State Board of Equalization and are based on detailed statements furnished by the railroad companies, showing the cost, value, and mileage of the main track and of sidetrack, and the value of buildings and station property, the value of stock and bonds as quoted on the market for selected periods, the amount of net profits, the dividends, and all other financial and statistical data necessary to arrive at a true valuation of the company's property as a going concern.[a]

A percentage, varying with conditions, is added by the State Board of Equalization to the cost value of the physical property as reported by the railroad. The purpose is to cover intangible value, which the successful operation of a railroad gives to the mere value of its physical property.[b]

An act of 1910 [c] providing for an elaborate system of taxing railroads on their gross receipts in lieu of other taxes is considered unconstitutional by the administrative authorities and its enforcement has never been attempted. It is now, however, in litigation by reason of a certain railroad seeking to establish its validity presumably because the earnings of the company are comparatively small and the classification applicable under the 1910 law provides a lighter tax burden for this particular company than it now bears under the ad valorem system.

Street railway and interurban companies are assessed and taxed in practically the same manner as steam railroads.[d]

Express and Telegraph Companies.

Express and telegraph companies pay locally for state and local purposes the general property tax on all property.

Assessments are by the State Board of Equalization, based on reports from these classes of companies. The exact method used by the board in valuing such property is not revealed. In a gen-

[a] R. L., secs. 7339, 7348–7350. Interview with state tax officials, September, 1914.

[b] Thus a certain company returned in detail the value of its physical property in the State of Oklahoma at $25,592,987 for the year 1913. This was increased by the State Board of Equalization to $30,983,019, the difference being the amount which, in the judgment of the board, raised the estimated physical value to the property value of a going concern. Interview with state tax officials, September, 1914.

[c] Interview with state tax officials, September, 1914. R. L., secs. 7470–7488.

[d] R. L., secs. 7337–7339, 7348–7350.

eral way, however, the entire estimated value of the physical property used in the transportation business by express companies is determined, and some consideration is given to its earning capacity. The proportion of this value taxable in Oklahoma is then estimated on a route mileage basis. Ocean and stage mileage is reduced to a railroad mileage basis on the theory that the earnings from 1 mile of rail route equal the earnings from a given number of miles of ocean or stage route.[a]

The method of determining the value of telegraph property approved by judicial decision [b] provides for the valuation of the entire property as a unit by taking into consideration its uses and all other elements of value. From the aggregate is determined a proportion of the whole, either by taking that part of the value of the entire route measured by the ratio of its length in the State to its total length, or by taking such portion of the value of the entire capital stock as the length of its lines in the State bears to the whole length of its lines. The portion of the entire value assignable to Oklahoma obtained by either method is then reduced in the proportion which the receipts per mile in Oklahoma bear to the average receipts per mile of the entire system.

In this case, dealing with the 1911 and 1912 assessments of telegraph property, it was proven that the State Board of Equalization had increased the amount returned by a telegraph company 200 and 250 per cent, respectively. The valuation found by a judicially appointed referee approximated the value returned by the company and was based upon "the price the physical property of the company would bring at fair, voluntary sale, aside from any intangible value gained by its being part of a system extending into and through other States and countries." The evidence included statements showing the value of the system, its earnings, etc., both within and without the State. From these data the court determined by the methods above described that the increased assessment by the state board was approximately correct.[c] The state board did not, however,

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[a] R. L., secs. 7336–7350. Interview with S. T. Bledsoe, attorney, Oklahoma City, Okla.

[b] In re assessment of Western Union Telegraph Co., 35 Okla., 626 (1912).

[c] From an assessment levied by the State Board of Equalization upon the property of the Western Union Telegraph Co. for the fiscal years 1911 and 1912, the telegraph company appealed. Held: That in estimating for purposes of taxation, the value of the property of the telegraph company situated within the State, it may be regarded not abstractly or strictly locally, but as a part of a system operated in other States, and the taxing state is not precluded from taxing the property because it did not create

reveal the method used by it in finding the amount of the assessment.

Detailed reports showing the value and kind of physical property owned and located in each minor taxing subdivision of the State are required annually of express and telegraph companies.[a]

An act providing for the taxation of gross receipts of express, telegraph, and other classes of companies was declared inoperative as to express companies operating both within and without the State,[b] but according to an opinion of the attorney general this act is valid as applied to companies operating wholly within the State.[c]

Car Companies.

Sleeping-car companies pay locally the general property tax for state and local purposes on assessments made by the State Board of Equalization. The board is authorized to ascertain the number of cars required to make the total car mileage of the company within the period of one year, and fix a valuation upon each particular class of said cars. The number of cars so ascertained is assessed to the respective corporations and such assessments are certified by the state auditor to the counties wherein

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the company or confer a franchise upon it, or because the company derived its rights or privileges under an act of Congress, or because it is engaged in interstate commerce.

In the absence of evidence to the contrary, the presumption is that all the property of an interstate telegraph company is part of its corporate plant, and that its tangible and intangible property are equally distributed throughout its mileage. In re assessment of Western Union Telegraph Co., 1911–1912, 35 Okla., 626 (1912).

[a] Interview with state tax officials, September, 1914. R. L., secs. 7340–7342.

[b] R. L., secs. 7459–7461 (Laws 1910, chap. 44).

An express company whose receipts are largely derived from interstate commerce and from investments in bonds and lands outside the State can not validly be subjected to the gross-revenue tax exacted by Oklahoma, Laws 1910, chap. 44, from public-service corporations, "which shall be in addition to the taxes levied and collected upon an ad valorem basis upon the property and assets of such corporation," equal to such proportion of a specified percentage of its gross receipts from every source whatever as a portion of its business done within the State bears to the whole of its business.

The tax is not a property tax but a tax on all revenue including that received from interstate commerce, and as such is unconstitutional.

This law can not be construed as referring only to the receipts from commerce wholly within the State in order to save its constitutionality. Meyer *v.* Wells Fargo & Co., 223 U. S., 298 (1912).

[c] Interview with state tax officials, September, 1914.

This tax, intended for state purposes, was to be in addition to the ad valorem tax. The rates provided were 3 per cent for express and 2 per cent for telegraph companies.

such cars are operated.[a] Inoperative acts provided for the taxation of both sleeping-car and freight-car companies on gross receipts.[b] Freight-car companies are not taxed at present in Oklahoma.[c] Sleeping-car companies report to the state auditor information necessary to enable the State Board of Equalization to make assessment.[a]

Other Public-Service Corporations.

Domestic and foreign telephone, pipe-line, electric light, gas, heat, waterworks, and power companies pay locally the general property tax for state and local purposes.[a] In addition companies of these classes which operate wholly within the State pay to the State for state purposes a tax on gross receipts.[e]

Assessment of the general property tax is by the State Board of Equalization.[f] As in the case of other corporations each company of the classes above mentioned reports in detail the value and location of its physical property in each minor taxing district of the State and such financial data as are necessary to enable the board to approximate earning capacity, etc. If from the reports rendered or from other available information it appears that the property has by reason of its use a value in addition to the mere physical value, an amount is added to the physical value reported which raises it to the value of property of a going concern. This additional amount is then reduced to a percentage and the proper proportion added to the value of each item of physical property located in the various minor taxing subdivisions of the state.[g]

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[a] R. L., secs. 7336–7350.

[b] Ibid., secs. 7459–7461; Laws 1913, p. 643. (See Comments, p. 294.)

[c] Interview with state tax officials, September, 1914.

[d] R. L., sec. 7346.

[e] Ibid., secs. 7459–7461.

[f] Ibid., secs. 7348–50.

The legislature has not selected oil and gas leases, as such, as subjects of taxation, nor has it provided for a severance of the various interests which may be held in real property. The property of a pipe-line company which owns valuable oil leases may be assessed under the fifth subdivision of section 7305, R. L., which defines taxable personal property as including "all stocks or shares in any national or other bank or company incorporated under the laws of this or any other State * * * and situated and transacting business in this State." In re Indian Territory Illuminating Oil Co., 43 Okla., 307 (1914).

[g] For example, the total value of the various kinds of property belonging to the Prairie Oil & Gas Co. in Oklahoma was returned at $26,400,287.87. This amount the state board of equalization raised to $32,167,774, or the value of the property as belonging to a going concern, the difference being the value of the intangible property.

The rates of the gross-receipts tax, which, as above stated, apply only to corporations operated wholly within the State, are as follows: Telephone, electric light, gas, heat, and power companies, one-half of 1 per cent; waterworks companies, one-fourth of 1 per cent; and pipe-line companies, 2 per cent.[a]

Oil, Natural Gas, and Mining Companies.

Domestic and foreign oil, natural gas, and mining companies pay locally for state and local purposes the general property tax on surface improvements used in producing, pumping, distributing, storing, and mining.[b] In addition, they pay to the State for state purposes a tax of one-half of 1 per cent on the gross value of production less the value of royalties paid Indians. The term "gross production" is construed as meaning all products produced during the three months period, whether sold during the period or remaining unsold in storage tanks or pipe lines on the last day of the quarter; provided, that where any portion of a gross production is royalty required to be paid for the benefit of the Indian citizen, or Indian tribe, the amount of such royalty is set out specifically, and the tax paid on the actual cash value of the gross production less the royalty so specified.[c]

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[a] R. L., secs. 7459–7461.

[b] Ibid., secs. 7332–7335.

[c] R. L., sec. 7464. Interview with state tax officials, September, 1914.

The gross-production tax on mining companies is not repugnant to sec. 57, Art. V, of the constitution of Oklahoma. This law provides for a property tax and is not invalid as being an unauthorized burden upon the Federal Government in its intercourse with the Indian tribes, upon whose lands the mines are located. McAlester-Edwards Coal Co. *v.* Trapp, 43 Okla., 510 (1914).

Such a tax, in addition to ad valorem taxes on the property of the producers, is in effect a tax on the business of mining, and as applied to lessees of coal lands of the Indian tribes under direct authority and regulation of the United States, is a burden on a Federal instrumentality and is not valid. Missouri K. & T. Ry. Co. *v.* Meyer, State Auditor, 204 Fed. Rep., 140 (1913).

Appellant, the lessee, of certain Indian coal lands, was held to be an instrumentality through which an obligation of the United States with certain Indian tribes was being carried into effect and in that capacity not subject to a state license. The gross-recepits tax was held not to represent the measure of the value of property liable to general assessment, but to be a license or occupation tax. A tax upon gross sales is not the same thing as upon stock treated as property. Choctaw, Oklahoma & Gulf Railroad Co. *v.* Harrison, 235 U. S., 292 (1914).

"The decision of Meyer *v.* Wells Fargo (supra, p. 287) has no bearing whatever on the mining production law but only on the question of transportation receipts from concerns doing an interstate transportation business. Concerns doing a transmission or transportation business, interstate, under that decision can not be taxed at all upon their gross receipts. The question of receipts from water, heat, light, and other companies, was not involved, although the court said in effect, by referring to the Ratterman case (Ratterman *v.* W. U. T. Co., 127 U. S., 411 (1888)), that a tax of that kind would be good." Opinion of Attorney-General of Oklahoma, Mar. 7, 1912.

Mercantile and Manufacturing Companies.

Domestic and foreign mercantile and manufacturing companies pay locally the general property tax for state and local purposes. In addition, they pay to the State for state purposes "the corporation license tax."

Domestic corporations of these classes are assessable by county assessors on the value of the entire working interest and capital, less the assessed value of real estate owned in Oklahoma and the value of such Oklahoma bonds as are specifically exempted. The difference represents the value of personal property and is taxed at the general property tax rates. In practice, the county assessor exercises discretionary power in fixing the amount of invested capital and in so doing is guided largely by the profits and success of the company. The data upon which assessments are based are taken largely from reports by the corporations.[a]

Foreign mercantile corporations and unincorporated companies and individuals are assessed on the average amount and value for the preceding year of goods, wares, merchandise, implements, machinery, capital, and property employed in merchandising.[a]

Foreign manufacturing companies like unincorporated companies and individuals are taxed on the average amount and value for the preceding year of capital employed in manufacturing, including machinery, material, appurtenances, and manufactured goods.[a]

Real estate of mercantile and manufacturing companies is taxed in the same manner as that of individuals.[a]

Each domestic corporation of the classes above mentioned reports annually to the county assessor the amount of its authorized and paid up capital stock, surplus, undivided profits, outstanding bonded indebtedness, and the value of all real estate, merchandise, fixtures, credits, accounts, etc. Foreign corporations, like individuals, report the average amount and value for the preceding year of capital employed in manufacturing, including that invested in machinery, material, appurtenances, and manufactured goods.[b]

Stockholders and Bondholders.

Shares of stock of domestic and foreign corporations of the classes herein treated are taxable as personal property to the holder. In practice, however, shares of domestic corporations are not taxed to

[a] R. L., sec. 7318. Interview with state and county tax officials, September, 1914.
[b] Interview with state and county tax officials, September, 1914.

holders. Bonds of foreign and domestic corporations are taxable to the holder as personalty.[a]

Foreign Corporations.

Foreign corporations, in general, with the exceptions noted above, are taxed practically in the same manner as similar domestic corporations.

III. FINANCIAL RESULTS.

Classification of Revenue.

The proportion of total state taxes for state purposes derived from corporations for 1912 was approximately 42 per cent.

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED NOVEMBER 30, 1912.[b]

Total state receipts, all sources		$3,068,613.73
State taxes from corporations:		
Railroads[c]	$432,366.55	
Street railways—		
General property[c]	7,583.32	
Gross receipts	6.48	
Pullman Co.[c]	1,610.54	
Express companies[c]	6,702.80	
Telegraph companies—		
General property[c]	3,555.10	
Gross receipts	64.39	
Telephone companies—		
General property[c]	10,976.65	
Gross receipts	1,727.58	
Oil pipe lines—		
General property[c]	72,379.34	
Gross receipts	8,834.00	
Electric, light, heat, power, and water, general property[c]	31,290.92	
Electric, light, heat, power, and water, gross receipts	21,558.75	
Oil, gas, and mining—		
General property[c]	16,903.68	
Production	130,613.25	
Miscellaneous companies, general property[c]	24,834.50	
Banks, general property[c]	56,568.07	
Corporation license tax	50,487.83	
Delinquent gross receipt taxes	3,973.23	
Insurance companies, taxes and fees	228,009.71	
Secretary of state, fees, etc	71,362.35	
Total ascertainable state taxes from corporations		1,181,409.04

[a] R. L., secs. 7305, 7319. Interview with state tax officials, September, 1914.

[b] Report of State Auditor, 1912.

[c] Estimated by applying the state rate of 2¼ mills to the property values found in Report of State Board of Equalization, 1912.

Other taxes:		
General property tax[a] (less $664,771.47 above estimated)	$1,561,855.60	
Game licenses, etc	51,601.75	
Inheritance tax	4,872.97	
Income tax	3,970.10	
Total state taxes not from corporations		$1,622,300.42
Total taxes for state purposes, all sources		2,803,709.46
Receipts from sources other than taxes:		
Receipts from state public lands	120,032.49	
Interest on deposits	57,885.15	
Board of agriculture	53,718.25	
Oil and mine inspector, fees, etc	21,643.02	
Library	2,629.50	
Fines, costs, etc	1,015.46	
Miscellaneous receipts	7,980.40	
Total receipts from sources other than taxes		264,904.27
Total state receipts, all sources		3,068,613.73

IV. COMMENTS.

Historical.

The first general revenue law of Oklahoma Territory, like those of neighboring States, provided for the taxing of property under the ad valorem system. Corporation property, moneys, credits, bonds, stock and joint stock companies were taxable for territorial and local purposes at general property rates. Railroads were assessed locally at a "fair valuation" per mile of main and side track, with the valuation of rolling stock distributed to the localities on a mileage basis. A territorial board of equalization equalized county assessments and determined the territorial tax rate.[b]

An entirely new code of laws was enacted in 1893. Numerous changes of minor importance were made in the tax laws and county and township boards of equalization were authorized, the former having power to equalize assessments between the townships and the latter to hear and pass on individual complaints.[c]

[a] Part of this comes from local taxation of corporations, but it is practically impossible to ascertain the amount thus received, except the amounts above estimated, which are not included in this item.

[b] Stats. 1890, chap. 75.

[c] Stats. 1893, chap. 70.

In 1895 the members of the territorial board of equalization were constituted a board of railroad assessors with authority to assess the property of all railroads. During the same year railroads were required to list sleeping, dining, and palace cars in the names of the true owners, to whom they were assessed.[a]

Under the laws of 1905, express companies were required to make annual returns to the territorial auditor and to county clerks, showing the amount of business transacted in the territory during the preceding year, the net receipts thereon, and a list of personal property in each county. "Such property and net receipts" were assessed by the territorial board of equalization and taxed for territorial and local purposes in the same manner as railway property. Street railways were required to make similar reports to the territorial auditor and to the county clerks for the purpose of assessments which were made by the territorial board of equalization.[b]

A greater part of the tax laws which were in effect during the territorial period was adopted by the State at its creation in 1907. In addition the first state legislature passed a broad gross-revenue tax applicable to public service corporations and to oil and mining companies.[c]

Another general revenue law was enacted in 1909. It was based upon the ad valorem system and provided a method of assessing corporations other than public-service corporations by deducting from the net value of moneyed capital, surplus, and undivided profits, the value of real estate owned in the State. The State Board of Equalization was directed by this law to assess the property of all public service corporations, and to equalize assessments between counties.[d]

The gross-revenue law of 1909 was amended in 1910 and in so far as it affected express companies was declared unconstitutional by the Supreme Court of the United States on the ground that it was a regulation of interstate commerce.[e] This law was again amended in 1913, but like several other laws which remain upon the statute books of Oklahoma is not enforced.[f]

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[a] Laws 1895, chap. 43.
[b] Laws 1905, chap. 31.
[c] Laws 1907, chap. 71, Art. II.
[d] Laws 1909, chap. 38.
[e] Meyer *v.* Wells Fargo & Co., 223 U. S., 298 (1912).
[f] Laws 1913, chap. 240, Art. II.

Inoperative Tax Laws.

Among the most prominent of the inoperative laws still remaining on the statute books of Oklahoma is the act of 1910 which provides a novel system of taxing the main track and rolling stock of railroads in lieu of other tax.[a] The valuation of the road was to be taken at the amount of its annual gross receipts. The rate for state and local purposes was to be governed by the relation which the gross receipts bore to the gross operating expenses, in accordance with the following table:

RAILROAD TAX RATES.

Class.	Relation of operating expenses to gross receipts.	State rate, or percentage of valuation.	Local rate, or percentage of valuation (for each mill levied upon locally assessed property).
A	Less than 60 per cent	0.02125	0.004625
B	60 per cent and less than 65 per cent	.020625	.0045
C	65 per cent and less than 70 per cent	.02	.004325
D	70 per cent and less than 75 per cent	.019375	.00425
E	75 per cent and less than 80 per cent	.01875	.004125
F	80 per cent and less than 85 per cent	.018125	.004
G	85 per cent and less than 90 per cent	.0175	.003875
H	90 per cent and over	.016875	.00375

This law was never enforced by the administrative authority, and is now in litigation in an action brought by the Ft. Smith & Western Railroad against the state auditor, the railroad seeking to establish the validity of the law because its earnings are comparatively small, and the classification which would apply under the 1910 law would make its tax burden substantially less than it is under the ad valorem system.[b]

The gross revenue law of 1910 providing for the taxation of express, telegraph, and other corporations was as above stated declared to be unconstitutional in so far as it related to the taxation of interstate express business, and for this reason it is not enforced as to interstate transportation and transmission corporations.

In 1913 the legislature enacted a law providing for a tax of 4 per cent on the gross receipts of express, telegraph, and freight car companies, and although it has never been judicially declared inoperative it is not enforced because it was passed within five days

[a] R. L., secs. 7470–7478.

[b] Interview with state tax officials and others, September, 1914.

of the closing of the session of the legislature. The passage of revenue acts within such time limit is prohibited by the constitution.[a]

Bibliography.

The following is a list of the more important publications, in addition to the constitution, the statutes, and the court reports, of value in the study of corporate taxation in Oklahoma:

Reports of the State Board of Equalization.
Reports of the State Auditor.
Article by S. T. Bledsoe, Proceedings of the National Tax Association, Vol. VIII, 1914.

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[a] Laws 1913, p. 647; constitution, Art. V, sec. 33. See Ralls *v.* Wyand et al., 40 Okla., 323 (1914).

A bill proposed by initiative petition in identical terms of the 1913 act failed at a state election of Aug. 4, 1914.

TEXAS.

I. GENERAL VIEW.

Chief Features.

First. The taxation of all corporate property, except that of car companies, under the general property tax for state and local purposes.

Second. The imposition for state purposes of occupation taxes on many classes of corporations.

Third. The collection for state purposes of a capital-stock tax from all corporations, domestic and foreign, except transportation companies paying an occupation tax on gross receipts.

General Property Tax.

The property of all corporations, except car companies, is taxed locally for state and local purposes under the general property tax. All such property, except the intangible assets of steam railroad, bridge, and ferry companies, is assessed locally. The intangible assets, if any, of these companies are assessed by a state board.

Taxes Supplemental to the General Property Tax.

In addition to the general property tax, manufacturing, mercantile, transportation and transmission companies pay to the State for state purposes one or more of the following kinds of taxes: A tax on capital, on gross receipts, on mileage, or on privilege. Thus railroads (unless operating under Federal charter), bridge, ferry, manufacturing, mercantile, and miscellaneous companies pay the graduated capital-stock tax; street railways pay a mileage tax, and also the graduated capital stock tax, if operating entirely in cities of less than 10,000, or the gross-receipts tax if operating in and out of cities of over 10,000 inhabitants; foreign telegraph companies pay the gross-receipts tax; domestic telegraph and domestic and foreign telephone, pipe-line, and oil-well companies pay both the graduated capital-stock and the gross-receipts taxes; gas, water, and electric companies pay a privilege tax and also the graduated capital-stock tax if operating in cities of less than 10,000, and if operating in cities of 10,000 or over they pay the privilege, the capital-stock, and the gross-receipts taxes;

freight-car companies pay the gross-receipts tax and sleeping-car companies pay the gross-receipts tax and a tax at a fixed rate on the proportion of the capital stock employed within the State.

Privilege taxes may be levied by counties, but can not exceed more than one-half of the State privilege tax. Like authority is given to municipalities.

Stockholders and Bondholders.

Shares of stock in the hands of resident holders are not taxed when the corporate property is taxed in the State; otherwise they, as well as corporate bonds, are taxed to the holders.

Foreign Corporations.

Domestic and foreign corporations of similar character are taxed in the same manner under the general property tax. There is a slight difference in the rates and application of the supplemental taxes.

Administration.

The state tax board, of the composite type, consists of the state tax commissioner appointed by the governor and confirmed by the senate for a term of two years, the comptroller of public accounts, and the secretary of state. It fixes and apportions the valuation of the intangible assets of railroad, ferry, and bridge companies, and has authority to examine books, papers, accounts, and persons for the purpose of securing a compliance with any tax law of the State, and its members or the state revenue agent may visit the several counties to aid in the enforcement of revenue laws of the State.[a] The assessments of the intangible assets by this board are not subject to review or change by the tax assessors of the county or by the county boards of equalization but after apportionment are taxed for state and county purposes only.

The assessment for state and county taxes of the tangible property of railroad, bridge, and ferry companies and of all property of other corporations is made by the county assessor subject to change by the county board of equalization. Municipal assessors assess taxes in incorporated cities for municipal purposes.[b]

A board known as the "Automatic Tax Board," consisting of the governor, comptroller of public accounts, and the state treasurer, annually determines the state rate to be applied to the general property assessments throughout the State for state and

[a] Rev. Stats., arts. 7407, 7410, 7414, 7419.
[b] Ibid., art. 941.

public free school purposes.[a] The state fund rate is calculated in accordance with the appropriations of the legislature and other amounts due by the State, and the rate for schools is so calculated as to yield a specified sum per child within the school age, for example, $7.85 for the year 1914.

The state revenue agent appointed by the governor investigates books and accounts of the assessing and collecting officers of the State and makes such other investigations in the interest of the public revenue as the governor may direct.[b]

The general property tax for state and county purposes is collected by county collectors of taxes, except in small counties where they are collected by sheriffs. Municipal taxes are collected by local officials. The graduated capital-stock tax is collected by the secretary of state. The state gross-receipts taxes are collected by the state treasurer. The state privilege taxes are collected quarterly in some cases and annually in others by county collectors of taxes.[c]

II. DETAILS AS TO THE CONSTITUTION AND STATUTES.

CONSTITUTION.[d]

"Taxation shall be equal and uniform."[e] All property in this State shall be taxed in proportion to its value, ascertained as provided by law. The legislature may impose occupation taxes. It

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[a] Rev. Stats., art. 7349.

[b] Ibid., arts. 7366 and 7392.

[c] Ibid., arts. 7361, 7362.

Sources of revenue in Texas:

Municipal and local districts.—(*a*) General property tax; (*b*) occupation and poll taxes.

County.—(*a*) General property tax; (*b*) occupation and poll taxes.

State.—(*a*) General property, occupation, inheritance, and poll taxes; (*b*) corporation, charter fees, annual franchise taxes; (*c*) miscellaneous sales, fees, fines, and forfeitures.

[d] Except as otherwise indicated, references are to the constitution of the State, as contained in "The Revised Civil Statutes of the State of Texas," 1911.

[e] This provision should not be construed as requiring the same method of ascertaining the value of property for the purpose of taxation, and the assessment of the intangible assets of certain classes of public service corporations by a state board, while other public service corporations are not assessed by the board, does not contravene this position. M. K. & T. Ry. Co. *v.* Shannon, 100 Tex., 379 (1907).

The facts certified showed that for years property in a certain county had been assessed by the local officers at two-thirds of its real value; as the intangible assets of a railroad company had been assessed by a state board and placed on the rolls at 100 cents on the dollar, the supreme court ordered a reduction in the latter assessment of one-third thereof. Lively *v.* M. K. & T. Ry. Co. of Texas, 102 Tex., 545 (1909).

Bank stock assessment in a county reduced for the same reason. Porter *v.* Langley, 155 S. W. Rep. (Civ. App.), 1042 (1913).

may also tax incomes, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; provided, that the occupation tax levied by any county, city, or town shall not exceed one-half of the tax levied by the State.[a]

All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax;[b] but the legislature may by general laws exempt certain property for public, religious, educational, and charitable purposes. All laws exempting any other property from taxation are void.[c]

Farm products in the hands of the producer and family supplies for home and farm use are exempt from all taxation until otherwise directed by the legislature.[d] Each family is exempted on $250 worth of household furniture.[a]

All property, whether owned by persons or corporations, shall be assessed for taxation and the taxes shall be paid in the county where situated, but the legislature may authorize the payment of taxes of nonresidents of counties to be made at the office of the comptroller of public accounts.[e]

Taxes shall be levied and collected by general laws and for public purposes only.[f]

The legislature shall not pass any local or special law exempting property from taxation.[g]

The power to tax corporations and corporate property shall not be surrendered or suspended.[h]

All property of railroad companies shall be assessed and the taxes shall be collected in the several counties in which said prop-

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[a] Constitution, Art. VIII, sec. 1.

[b] A law which imposed a mileage tax on those owning or running on railroads in the State palace cars not the property of the railroad on which operated, was declared unconstitutional. It was a tax on a named business done on property belonging to others. The pursuit of the business constituted the occupation taxed. A railway company using on its own road, its own or the cars of others, was not liable. "The fact that a railway company owns the railway over which it runs its own, or the cars of some other person, can not affect the question of classification; for such ownership is not one of the elements on which others are placed within the class." The Pullman P. C. Co. *v.* The State of Texas, 64 Tex., 274 (1885).

[c] Constitution, Art. VIII, sec. 2, as amended 1906.

[d] Ibid., sec. 19, as adopted 1879.

[e] Ibid., sec. 11.

[f] Ibid., sec. 3.

[g] Ibid., Art. III, sec. 56.

[h] Ibid., Art. VIII, sec. 4.

erty is situated, including so much of the roadbed and fixtures as shall be in each county. The rolling stock (considered personal property[a]) may be assessed in gross in the county where the principal office of the company is located, and the county tax paid upon it shall be apportioned by the comptroller among the several counties through which the road passes, in proportion to the distance such road may run through any such county, as a part of their tax assets.[b]

All property of railroad companies, of whatever description, lying or being within the limits of any city or incorporated town within this State, shall bear its proportionate share of municipal taxation.[c]

The State taxes for the general fund and for free public schools are limited to 35 and 20 cents, respectively, on each $100 valuation.[d] The rate for county, city, or town taxes is also limited.[e] One-fourth of the revenue from the State occupation taxes is for the benefit of the free public schools.[f]

The legislature shall have no power to release the inhabitants of, or property in, any county, city, or town, from the payment of taxes levied for state or county purposes, unless in the case of great public calamity.[g]

The legislature shall provide for equalizing, as near as may be, the valuation of all property subject to taxation (the county commissioners' court to constitute a board of equalization) and may also provide for the classification of all lands with reference to their value in the several counties.[h]

The specification of the objects and subjects of taxation shall not deprive the legislature of the power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed in this constitution.[i]

The State of Texas hereby releases to the owner or owners of the soil all mines and minerals that may be on the same, subject to taxation as other property.[j]

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[a] Constitution, Art. X, sec. 4.

[b] Ibid., Art. VIII, sec. 8.

[c] Ibid., Art. VIII, sec. 5.

[d] Ibid., Art. VIII, sec. 9, as amended 1906; Art. VII, sec. 3, as amended 1909.

[e] Ibid., Art. VII, sec. 3, as amended 1909; Art. VIII, sec. 9, as amended 1906; Art. XI, secs. 4 and 5, as amended 1909.

[f] Ibid., Art. VII, sec. 3, as amended 1909.

[g] Ibid., Art. VIII, sec. 10.

[h] Ibid., Art. VIII, sec. 18.

[i] Ibid., Art. VIII, sec. 17.

[j] Ibid., Art. XIV, sec. 7.

STATUTES.[a]

General Property Tax.

All corporations herein treated, domestic and foreign, except car companies, pay the general property tax locally for state and local purposes.

All property is required to be valued at its full and true value in money,[b] namely, the fair cash market value, or the price obtainable at private sale and not at forced sale.[c] In practice, however, property is assessed at from 25 to 90 per cent of full value.[d]

The situs of all property, real and personal, is generally fixed at the place of its location,[e] but personal property temporarily removed from the State or county is assessed at the principal office of the owner. Steamboats and other water craft are assessed where enrolled, registered, or licensed, or where kept when not enrolled, registered, or licensed.[f]

Taxable personal property includes goods, chattels, effects, moneys, credits, stock in corporations out of the State, royalties,

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[a] The "Rev. Stats." herein referred to are "The Revised Civil Statutes of the State of Texas," adopted 1911.

[b] Rev. Stats., art. 7530.

[c] Ibid., art. 7506.

[d] Letter of state tax commissioner, Nov. 28, 1914.

[e] Rev. Stats., art. 7510.

Notes held at the agency in the State, for collection, in payment of merchandise sold at such permanent agency for a nonresident principal, are taxable at the place where the agent resides. Jesse French Piano & Organ Co. *v.* City of Dallas, 61 S. W. Rep., 942 (1901).

Purchase money notes, the property of a nonresident, secured on Texas land sold by him, were left with his local agent for collection. They were held taxable, the court saying: "The notes had their origin in Texas, were payable in Texas, and were secured by a lien on land in this State, had never been actually in the possession of the owner, but remained continuously in Texas. * * * The presence of these notes in Texas is the 'dominant factor' in this case." Hall *v.* Miller, 102 Tex., 289 (1909).

Securities of a domestic insurance company domiciled at Houston, which were deposited with the state treasurer at Austin, were held taxable at the latter place, though listed at Houston. "It appears to us that the real basis of the later decisions is that notes are property, and therefore taxable, under our laws, at the place where they are situated. Guarantee Life Ins. Co. of Houston *v.* City of Austin, 165 S. W. Rep., 53 (1914).

[f] Rev. Stats., art. 7514.

Oil steamers plying between points on the seaboard may not be taxable by the city where they are registered. Since under the constitution property must be taxed where actually situated or located, the actual situs of the vessels is at the port where they receive oil for shipment and are stationed when not in use, which was also in the case under consideration the port nearest to the place of business of the owner. City of Galveston *v.* J. M. Guffey Petroleum Co., 51 Tex. Civ. App., 642 (1908). Writ of error refused by the state supreme court.

franchises, and income from annuities.[a] Indebtedness bearing interest may be deducted from credits bearing interest.[b]

Exempt from taxation are certain public, religious, charitable, and educational property, cemeteries not for profit, water plants owned by municipalities, pensions from the United States or from the State, household furniture not exceeding $250 in value, farm products in the hands of the producer, and family supplies for home use.[c]

Graduated Capital-Stock Tax.

A graduated annual franchise tax, based either on the full amount of authorized capital stock, or on issued and outstanding capital stock plus surplus and undivided profits when the total of these three items exceeds the full amount of authorized capital stock, is in addition to other taxes payable to the State for state purposes by every domestic corporation and every foreign corporation authorized by the State to do business therein, except transportation companies[d] subject to occupation taxes on gross receipts,[e] certain financial companies, and agricultural fair associations.[f] The rate differs between foreign and domestic corporations, that applying to foreign corporations being slightly higher than that applying to domestic corporations.[g]

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[a] Rev. Stats., art. 7505.

[b] Interview with state tax officials, September, 1914.

[c] Rev. Stats., art. 7507; Constitution, Art. VIII, sec. 19.

[d] Sleeping, palace, and dining car companies pay a special tax based on capital stock. (See p. 309.)

[e] Rev. Stats., art. 7403.

[f] Rev. Stats., arts. 7393–7405, as amended, Laws 1911, chap. 51, and Laws 1913, chap. 153.

The Western Union Telegraph Co., a foreign corporation, was held not liable to this tax, based on total capital stock, on the authority of Western Union Tel. Co. *v.* Kansas, 216 U. S., 1. Western Union Telegraph Co. *v.* State of Texas, 103 Tex., 306 (1910).

[g] The rate for domestic corporations is 50 cents on each $1,000 or fraction thereof up to $1,000,000 of authorized capital stock, or capital stock issued and outstanding plus surplus and undivided profits, whichever is the greater; if over $1,000,000, the tax on the excess is 25 cents on each $1,000.

The rate for foreign corporations for the first $100,000 of authorized capital stock, or issued and outstanding capital stock plus surplus and undivided profits, which ever is the greater, is $1 on each $1,000 or fraction thereof. If the same exceeds $100,000 and does not exceed $1,000,000 the rate on the excess is $2 on each $5,000 or fraction thereof. If the same exceeds $1,000,000 and does not exceed $10,000,000 the rate on the excess is $2 on each $20,000 or fraction thereof. The rate on the excess over $10,000,000 is $2 on each $50,000. Letter of State Tax Commissioner, Nov. 28, 1914.

The minimum fee for domestic corporations is $10, and for foreign corporations $25.

A foreign manufacturing corporation, which merely places its products in the hands of local merchants to be sold on commission, is engaged in interstate commerce and

Gross-Receipts Taxes and Privilege Taxes.

Occupation taxes payable to the State for state purposes are assessed on a great variety of corporations. Besides street railway, terminal, telegraph, telephone, express, car, oil-well, pipeline, light, and water companies, gross-receipts occupation taxes are assessed on certain classes of merchants and commercial agencies, and privilege taxes on theaters, cotton brokers, commission merchants, credit associations, ball parks, and other specified businesses. Occupation taxes based on gross receipts of the classes of corporations mentioned herein may not be levied for local purposes.[a] Privilege taxes of specific amounts may, however, be levied also by counties and by cities and towns, but only at one-half the amounts, respectively, levied for state purposes.[b]

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need not secure a permit to do business in the State. Allen *v.* Tyson-Jones Buggy Co., 91 Tex., 22 (1897). Lasater *v.* Purtell Mill & Elevator Co., 22 Tex. Civ. App., 33 (1899).

Similarly, one shipping its manufactured goods into the State, whether sold before or after arrival in the State. Miller *v.* Goodman, 91 Tex., 41 (1897).

Where goods are shipped into a State not the residence of the owner, and there held in stock and offered for sale in open market by his agent, the business of selling them is not interstate commerce. Barnhard Bros. & Spindler *v.* Morrison, 87 S.W. Rep., 376 (Civ. App. 1905).

"We do not think that because a permit was granted to appellant under a former law the State would be thereby precluded from passing any further franchise tax upon the same subject." This is a license or privilege tax and not a property tax, and the State has authority to impose the same. The court thought the tax could not be assailed upon the ground that a less tax was imposed upon domestic corporations; the effect "being simply to classify corporations and impose a like tax upon all within the same class." Gaar, Scott & Co. *v.* Shannon, 52 Tex. Civ. App., 634 (1909).

Application by the Atlas Powder Co., a foreign corporation, to compel the secretary of state to issue a permit to it to transact business within the State, though it refused to pay the franchise tax, was declined by the state supreme court, thus sustaining the attorney general that the franchise tax law was not in violation of the U. S. Constitution and was applicable to intrastate business of foreign corporations. Report of Att'y Gen'l, 1912–14, p. 24.

A preliminary injunction was granted a foreign corporation restraining the collection of this tax. "An imposition which is based, whether in whole or in substantial part, on the value of property outside of the State, or on interstate or foreign commerce engaged in, so that the amount of it grows in exact proportion to the growth of such property or commerce, is a burden on such property or commerce." Crane Co. *v.* Looney, 218 Fed. Rep., 260 (1914).

[a] Rev. Stats., art. 7390.

[b] Ibid., art. 7357.

When the legislature has declared that a named occupation shall be taxed, for the benefit of the State, and has fixed the amount of the tax, then, and not before, has a county, city, or town the power to tax that occupation. Hoefling *v.* San Antonio, 85 Tex., 228 (1892).

Steam Railroad, Bridge, and Ferry Companies.

Railroad, bridge, and ferry companies, domestic and foreign, pay the general property tax locally for state and local purposes on all property, including intangible values. In addition, these classes of companies, unless operating under Federal charter,[a] pay the graduated capital-stock tax to the State for state purposes.

Intangible property is assessed by the State Tax Board and the method of determining its value may be described in a general way as follows: First, by obtaining the aggregate value of the entire system, and then deducting therefrom the value of such real and personal property as is not used in the railroad business. The portion of the remainder representing the taxable value of railroad property in Texas is then determined on the main-track mileage basis,[b] and from this portion is deducted the value of tangible property as determined by the state board.[c] The remainder, if any, is the value of the intangible property, which is distributed on a main-track mileage basis to the various counties wherein the roads are operated.[d] The valuation of the tangible

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[a] The capital-stock tax is not collected from the Texas & Pacific Railway Co., because it derives its right to carry on business in Texas from a franchise granted by the Federal Government. Interview with state tax officials, September, 1914.

See also State of Texas *v.* Texas & Pacific Railway Co., 100 Tex., 279 (1907).

[b] Interview with state tax officials, September, 1914.

[c] Rev. Stats., art. 7420.

[d] In the original law of 1905 only the assessed value was to be deducted. This was considered improper and unjust to the company, as the assessed value was confessedly only about 50 per cent of the actual value, and to deduct such assessed value had the effect of double taxation on the remaining 50 per cent, the same having already been passed upon by the local boards of equalization. First Annual Report of the Tax Commissioner, 1906, p. 6.

The county boards of equalization are without authority to reduce the amount of intangible assessment thus apportioned. Rev. Stats., art. 7422.

The action of the county board of equalization in placing the tangible property of railroads on the tax rolls at 50 per cent of full and fair market value, by reason of the fact that the intangible assets of the railroads (valued by the state tax board) had been placed thereon at full and fair market value, was approved by the court, in view of the fact that all other property in the county, except money, had been placed on the rolls at 75 per cent of full and fair market value. M. K. & T. Ry. Co. of Texas *v.* Hassell, 57 Tex. Civ. App., 522 (1909).

Where the property of individuals in a county was assessed at 50 per cent of its real value in accordance with a deliberately adopted plan, it was held that an assessment of intangible property of a railroad situated in said county by a state board at full value violated sec. 1, Art. VIII, of the constitution, requiring equality and uniformity; and the tax officers were prevented from collecting on an assessment of more than 50 per cent of the valuation of such property. M. K. & T. Ry. Co. of Texas *v.* Kone, 122 S. W. Rep., 424 (Civ. App., 1909). Also see Lively *v.* M. K. & T. Ry. Co. of Tex., 102 Tex., 545 (1909).

property determined by the state board does not necessarily agree with the valuation upon which the railroad is taxed, as all tangible property of railroads, except rolling stock, is independently assessed by the county assessor of each county through which the road passes.[a]

Rolling stock is listed with the county assessor of the county wherein the principal office of the railroad is located. The assessment of rolling stock after equalization by the county board is certified to the comptroller of public accounts and by him distributed on a main-track mileage basis to the counties in which the roads are operated.[b]

Distribution of the taxable value of the intangible property of bridge and ferry companies is based on the percentage of business done in each county,[c] and the value so distributed, like intangible values and rolling stock, is there taxed for county and state purposes at the same rate as locally assessed property.[d]

As in many other States, no one rule for determining values has been found applicable to all railroads in Texas, but the following abstract from a letter by the tax commissioner gives the principal elements considered by the state board when engaged in determining the intangible values of railroad companies:[e]

"The board has found it impracticable and in most instances impossible to ascertain the market value of the capital stock and bonds of the railroad companies, by reason of the fact that in the case of the majority of the companies, the stock and bonds are not on the market in sufficient quantities for either the selling or asking price for same to furnish any reliable evidence of their value. Being unable to ascertain the market value of a railroad's securities, we attempt to ascertain its true value, and in doing so the board makes a study of the history of the road, and among other things collects and considers the facts relating to the revenue-producing ability of the road. I will attach hereto and mark 'Exhibit A' two pages taken at random from my 'work sheets' showing some of the data gathered and considered in the valuation of one road.[f] Like data were also compiled concerning all the

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[a] Rev. Stats., art. 7569.

[b] Rev. Stats., art. 7525.

The tax on rolling stock can not be levied and collected by subdivisions of counties. Biennial report of attorney general, 1912–14, p. 632.

[c] Rev. Stats., art. 7420.

[d] Ibid., art. 7422.

[e] Letter to Commissioner of Corporations, Oct. 16, 1914.

[f] The work sheets referred to contain complete data, covering capitalization, indebtedness, earnings, dividends, interest, operating expenses, maintenance, expenditures, taxes paid, etc.

roads, except that in the case of a new road we could not go so far back in figuring on its productive capacity.

"In addition to the above data, this office compiles detailed information for the use of the state tax board, showing the comparative receipts, operating expenses, taxes, etc., as paid by the various roads. * * * Then having all the above data and other information before it, all of which is taken into consideration, the board determines the true value of the company under consideration. When it is determined, after considering all the evidence before the board tending to show the true value of the company under consideration, that its true value can be equitably ascertained by capitalizing its net income (after the deduction of operating expenses, hire of equipment, rentals, and taxes, but not interest paid on bonds, etc., or expenditures for additions and betterments), then such income is capitalized at 6 or 7 per cent according to the size and stability of the road in question.

"Capitalizing the net income of a road is not the only way pursued by the board. In some instances where a 'road' is only a part of a system and the 'parent line' from an investigation of all the records (tariffs, etc.) is not getting its fair proportion of the earnings, we make allowance for such fact in figuring on the earnings, etc., of such roads.

"When the market value of a road's bonds can be pretty clearly ascertained, then we deduct from the net income the interest paid on the bonds, and if it appears equitable to do so, we capitalize the remainder thereof at 6 or 7 per cent, to get the value of the stock, and to the value of the same add the value of the bonds to obtain the true value of the road.

"In ascertaining the physical value, we rely largely upon the railroad commission's (Texas) value of same, but not exclusively so, and of course the intangible is found by subtracting the physical value from the true value.

"I know this does not give a clear idea of how the board values railroads, but nothing short of a verbatim report of our proceedings would answer the question, and then no method would be disclosed; 'each tub stands on its own bottom.'"

For the purpose of the intangible assessment, these companies make reports to the state tax commissioner showing total gross receipts from business within the State and a due proportion of its interstate business, amount, market, and actual value of capital stock, amount of capital employed within the State, assessed value and true value of tangible property in each county of the State, assessed and true value of tangible property outside the State not used in its business, bonded indebtedness, total mileage, and mileage within the State by counties.[a] They are also re-

[a] Rev. Stats., arts. 7415, 7416.

quired to report to each county assessor particulars with respect to their property in the county, as follows: (*a*) Length of railroad and value per mile, including right of way, roadbed, superstructures, depots and grounds, shops, and fixtures of every kind; (*b*) all other real estate owned by the company; (*c*) all personal property except rolling stock, credits and franchises.[a] The county assessor may approve the valuations so reported or raise them,[b] but in either case they are subject to change by the county board of equalization.[c] The value of rolling stock is reported to the assessor of the county in which the principal office of the company is situated. Leased rolling stock not returned by the lessee, is assessed to the owner, if a resident, otherwise to the railroad company using it.[d]

Terminal Companies.

Companies doing exclusively a railroad terminal business, pay the general property tax locally for state and local purposes. In addition they pay to the State for state purposes 1 per cent on total gross receipts.[e]

The property of these companies, including franchises and credits, is assessed locally for general property taxation.

Street and Electric Railway Companies.

Interurban, electric, trolley, and traction companies pay the general property tax locally for state and local purposes. In addition, they pay locally for state purposes a tax of $2 per mile of track owned,[f] and to the State for state purposes, either the gross-receipts tax or the graduated capital-stock tax.

All property of these companies, including credits, is subject to the general property tax assessed by county assessors for state

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[a] Rev. Stats., art. 7524. Interview with state tax officials, September, 1914.

[b] Ibid., art. 7569.

[c] Ibid., art. 7570.

[d] Ibid., art. 7525.

[e] Rev. Stats., art. 7384. See Report of Attorney General, 1906–1908, p. 703.

This gross receipts tax was not intended as a direct tax upon gross receipts but as an occupation tax, or a tax levied for the privilege of exercising a particular occupation, and the statute does not violate any provision of the Federal Constitution. Judgment was rendered for the State based upon receipts from both its interstate and domestic business. State *v.* Houston Belt & Terminal Railway Co., 166 S. W. Rep., 83 (Civ. App., 1914).

[f] Rev. Stats., art. 7355, sec. 34.

and county purposes, and by municipalities for municipal purposes. Some municipalities assess franchises separately.[a]

The state gross-receipts tax is imposed at the rate of one-half of 1 per cent on companies of these classes operating in cities of 10,000 and less than 20,000 inhabitants; and at the rate of three-fourths of 1 per cent when operating in any city of more than 20,000 inhabitants.[b]

Each company of the above classes is required to report the amount of its quarterly gross receipts to the comptroller of public accounts. Companies of these classes operating wholly within cities of less than 10,000 inhabitants are not subject to the tax on gross receipts but pay the graduated capital-stock tax.

Telegraph, Telephone, and Express Companies.

Telegraph, telephone, and express companies, foreign and domestic, pay the general property tax locally for state and local purposes. In addition they pay the gross-receipts tax to the State for state purposes, and telegraph and telephone companies pay also the graduated capital-stock tax.[c]

The property of these classes of companies is assessed in the same manner as the property of individuals. For state and county general property taxation assessments are made by county assessors, and for municipal taxation, which includes the assessment of franchises of telegraph and telephone companies, by municipal assessors.[a]

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[a] Interview with state and municipal tax officials, September, 1914.

Under its charter "to levy and collect the ordinary municipal taxes upon the roadbed, rights, franchises, and all other property of street railroads," the city of Dallas has power to tax the franchises of a street railway company, whether as a part of its tangible property, or separately, and such charter does not require the assessment to conform to the law for assessing state taxes. City of Dallas *v.* Dallas Consolidated Electric Street Ry., 95 Tex., 268 (1902).

[b] Rev. Stats., art. 7378.

The tax imposed by this article is in addition to the tax of $2 per mile on each mile of track owned by a street railway company in the State as above given. Dallas Consol. Elec. St. Ry. Co. *v.* State, 102 Tex., 570 (1909).

Interurban, trolley, traction, and electric street railway companies subject to gross-receipts taxes are not subject to the capital-stock tax. See Report and Opinions of the Attorney General of the State of Texas for the years 1906–1908, pp. 659, 702, 703.

[c] An action to collect this tax from a foreign telegraph company resulted in a judgment for the company, on the authority of Western Union Telegraph Co. *v.* Kansas, 216 U. S. 1. Western Union Telegraph Co. *v.* State of Texas, 103 Tex., 306 (1910).

The Western Union Telegraph Co. does not pay the capital stock tax. Interview with state tax officials, September, 1914.

The rates of the gross-receipts tax applicable to these classes of companies are as follows: Telegraph companies (including wireless companies), 2¾ per cent;[a] telephone companies, 1½ per cent;[b] and express companies, 2½ per cent.[c] These taxes are paid quarterly by telegraph and telephone companies and annually by express companies. The amount payable is determined from reports by the companies to the comptroller of public accounts.

Car Companies.

Sleeping, palace, dining, or freight car companies do not pay the general property tax.

Sleeping, palace, and dining car companies, domestic and foreign, pay quarterly to the State for state purposes the gross-receipts tax at the rate of 5 per cent on receipts from all sources in the State except from buffet service.[d] This is in lieu of all other taxes except a tax, paid to the State for state purposes, of 25 cents on each $100 of capital stock employed in Texas. The amount of the capital stock employed in Texas is determined by first deducting from the total capital stock the amount invested in real estate, manufacturing plants, materials, and properties other than cars and equipment, and then taking such a proportion of the remainder as the number of miles of track over which the cars of the company are run in the State bears to the whole number of miles of track over which such cars are run.[e]

Foreign freight-car companies pay quarterly to the State for state purposes the gross-receipts tax levied at the rate of 3 per cent on receipts from business done within the State.[f]

Assessment of these taxes is based on reports by the companies to the comptroller of public accounts.

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[a] Rev. Stats., art. 7370. Interview with state tax officials, September, 1914.

[b] Rev. Stats., art. 7382. The tax for the first quarter of engaging in such business is $50. Rev. Stats., art. 7385.

[c] Rev. Stats., art. 7369.

[d] Rev. Stats., art. 7375.

An act of 1881 which levied an annual tax on those owning or running palace, sleeping, or dining cars not owned by the railroad company, on any railroad in the State, of $2 per mile of railroads in the State over which such cars might run, was held not equal and uniform, as required by the constitution, because railway companies were exempted, whether using their own or the cars of others on their own tracks. Pullman P. C. Co. *v.* The State of Texas, 64 Tex., 274 (1885).

[e] Rev. Stats. (1895), art. 5243g. Interview with state tax officials, September, 1914.

[f] Rev. Stats., art. 7373.

Oil-Well and Pipe-Line Companies.

Oil-well and pipe-line companies, domestic and foreign, pay the general property tax locally for state and local purposes. In addition oil-well companies pay to the State for state purposes one-half of 1 per cent of the market value of all oil produced,[a] and pipe-line companies 2 per cent on their gross receipts. If the pipe line extends beyond the limits of the State the amount of receipts taxable in Texas is that proportion of the aggregate receipts which the length within the State bears to its entire length.[b] Both classes of these companies pay also to the State for state purposes the graduated capital stock tax.

Light and Water Companies.

Gas, electric light, and water companies, foreign and domestic, pay locally the general property tax for state and local purposes. In addition they pay to the State for state purposes the graduated capital-stock tax, a tax of fixed amount, and the gross-receipts tax.

The general property tax assessment for state and county purposes is by county assessors, and for municipal purposes by city officials. Some municipalities assess franchises separately.[c]

The state privilege tax, or tax of fixed amount, in towns or cities of less than 10,000 inhabitants is $20, and the gross-receipts tax does not apply; but in towns or cities of more than 10,000 and less than 25,000 the privilege tax is $35 and the gross-receipts tax is applied at the rate of one-fourth of 1 per cent, and in towns or cities of over 25,000 inhabitants the privilege tax remains the same, while the rate of the gross-receipts tax is increased to one-half of 1 per cent.[d]

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[a] Rev. Stats., art. 7383.

It was contended that this provision "violates the state constitution, as to rate of taxation, equality, and uniformity of the tax. * * * This contention is based upon the idea that the tax imposed is an ad valorem tax. In our opinion, the tax is not upon the gross product of the oil wells but upon the occupation of owning and controlling, or managing oil wells producing oil; and the amount of the tax is measured by a percentage of the market value of the gross products. * * * All that is required in reference to equality and uniformity is that the taxes imposed be equal and uniform upon the same class of subjects" in levying occupation taxes; and the section operates on all oil producers alike. Producers' Oil Co. *v.* Stephens, 44 Tex. Civ. App., 327 (1907); writ of error denied by state supreme court.

[b] Rev. Stats., art. 7374.

[c] Interview with state and municipal tax officials, September, 1914.

[d] Rev. Stats., art. 7355, secs. 25–27; art. 7371.

Manufacturing, Mercantile, Mining, and Miscellaneous Companies.

Manufacturing, mercantile, mining, and miscellaneous companies, domestic and foreign, pay locally the general property tax for state and local purposes. In addition, they pay the State for state purposes the graduated capital-stock tax and certain of them pay privilege or occupation taxes.

Property listed by manufacturing corporations for assessment purposes includes materials, manufactured articles, tools, implements and machinery, engines and boilers, and property listed by mercantile corporations includes goods, wares, and merchandise on hand January 1.[a]

Every company selling law books, or text-books used in the public schools, and maintaining a state agency, pays quarterly a state tax of 1 per cent on the gross amount received from such business within the State.[b]

Wholesale ice dealers pay an annual state tax ranging from $10 to $50,[c] graduated according to the population of the city where the business is conducted.

Wholesale dealers in coal oil, naphtha, benzine, or other mineral oils refined from petroleum, pay quarterly a state tax of 2 per cent on all sales of such articles made within the State.[d]

City councils have power to license, to tax, and to regulate the business of merchants, all trades, professions, occupations, and callings, the taxing of which is not prohibited by the constitution

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[a] Rev. Stats., arts. 7518, 7562.

[b] Ibid., art. 7381.

[c] Ibid., art. 7355, sec. 32.

A domestic corporation manufacturing ice at Waco and selling the same at wholesale and retail in the county was held not subject to the tax. Egan *v.* State, 68 S. W. Rep., 273 (Tex. Crim., 1902).

[d] Rev. Stats., art. 7377.

"The fact that the amount of the tax is to be determined in prescribed methods from the value, or extent, or magnitude of the businesses done, can not convert it into an ad valorem tax upon the property of the persons conducting them." Texas Company *v.* Stephens, 100 Tex., 628 (1907).

Wholesale druggists dealing in naphtha, benzine, and other mineral oils refined from petroleum are subject to this tax. See Report and Opinions of the Attorney General of the State of Texas for the years 1906–1908, pp. 687, 688.

The requirement that all wholesale dealers in specified articles shall pay an occupation tax without exacting a similar tax on wholesale dealers in other articles can not, on the face of the statute or by reason of any facts within the judicial knowledge of the court, be held to deprive the taxpayer of his property without due process of law or to deny him the equal protection of the laws. Southwestern Oil Co. *v.* Texas, 217 U. S., 114, 127 (1910).

of the State, provided no such tax is construed as a tax on property.[a]

Stockholders and Bondholders.

Shares of capital stock of corporations which are required to return their capital and property for taxation are not taxed to the resident holders.[b] When the corporate property is not assessed in the State, resident stockholders are subject to general property taxation on their stock. Corporate bonds are taxable to the resident owner.[c]

Foreign Corporations.

Foreign and domestic corporations are taxed in like manner under the general property tax. There is no difference in the treatment of the two classes in the imposition of the gross-receipts or privilege taxes. However, they are taxed at slightly different rates for the graduated capital-stock tax, and the foreign corporations subject thereto, that is, those required to obtain a permit to do business in the State, are taxable on the full amount of their authorized capital stock.

III. FINANCIAL RESULTS.

Classification of Revenue.

The proportion of total state taxes for state purposes derived from corporations for 1912 was 26 per cent.

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[a] Rev. Stats., art. 869; also see arts. 928–930.

An annual occupation tax of $35 from every commercial traveling salesman, etc., by sample or otherwise, was held void as interfering with interstate commerce in so far as it affected a salesman of the house of another State. Asher *v.* Texas, 128 U. S., 129 (1888). Ex parte Stockton, 33 Fed. Rep., 95 (1887).

An occupation tax of $500 on every person selling the Kansas City Sunday Sun or like publications, in each county where sold, was held not invalid as a regulation of interstate commerce. Preston *v.* Finley, 72 Fed. Rep., 850 (1896).

[b] Rev. Stats., art. 7519.

"To tax the shares of the stockholder in a corporation when all the property which gives value to such shares is taxed against the corporation, would be in effect double taxation of the same thing." Gillespie *v.* Gaston & Thomas, 67 Tex., 599 (1887).

[c] Rev. Stats., arts. 7505, 7509, 7518, 7562.

TOTAL STATE RECEIPTS, TAXES FROM CORPORATIONS, OTHER TAXES, AND RECEIPTS FROM SOURCES OTHER THAN TAXES, YEAR ENDED AUGUST 31, 1912.[a]

Total state receipts, all sources		$13,599,609.69
State taxes from corporations:		
Steam railroads, general property tax, including intangible assets[b]	$1,006,659.10	
Street railroads, general property tax[b]	15,783.22	
Street railroads, occupation and gross-receipts taxes	50,006.53	
Steamboat companies[b]	6,707.89	
Terminal companies, gross-receipts tax	1,621.19	
Telegraph and telephone companies, general property tax[b]	26,921.23	
Telegraph companies, gross-receipts tax	21,477.51	
Telephone companies, gross-receipts tax	87,745.88	
Express companies, gross-receipts tax	64,090.83	
Pullman Co., special tax	5,122.85	
Pullman Co., gross-receipts tax	38,070.20	
Private car companies, gross-receipts tax	2,048.87	
Pipe line companies, gross-receipts tax	1,398.22	
Water, gas, and light companies, occupation and gross-receipts taxes	33,932.08	
Banking companies, general property tax[b]	222,998.94	
Banking companies, fees and inspections	60,477.50	
Insurance companies, fees and tax	409,981.72	
Wholesale oil dealers	23,777.28	
Other corporations, general property tax[b]	10,745.96	
Capital-stock tax	494,397.01	
Incorporation fees	183,008.00	
Total ascertainable state taxes from corporations		2,766,972.01
Other taxes:		
General property tax[c] (less amount above estimated as paid by corporations)	5,962,080.90	
Poll tax	844,349.66	
Oil well production tax	20,708.05	
Gross-receipts tax on certain occupations	9,311.95	
Occupation license taxes	160,217.46	
Liquor tax	862,930.73	
Inheritance tax	47,579.03	
Miscellaneous taxes	26,136.18	
Total state taxes not from corporations		7,932,413.96
Total state taxes for state purposes, all sources		10,699,385.97

[a] Annual Report of Comptroller of Public Accounts, 1912.

[b] Estimated by applying the state rate of one-eighth and one-sixth of 1 per cent to the assessed valuations, as found in Report of Comptroller of Public Accounts, 1911, p. 81.

[c] Estimated from total collections of the county tax collectors.

Receipts from sources other than taxes:		
Land sales and leases	$2,138,109.64	
Interest on deposits and investments	582,763.04	
Game, fish, and oyster funds	32,325.92	
Fees, students	34,057.05	
Fees, sales, and receipts from institutions	34,878.33	
Settlement of estates	3,723.89	
Office fees	28,941.60	
Miscellaneous	45,424.25	
Total receipts from sources other than taxation		$2,900,223.72
Total state receipts, all sources		13,599,609.69

IV. COMMENTS.

Historical.

The more important existing provisions of the constitution of Texas which relate to taxation date from its admission as a State. The constitution of 1845 required taxation to be equal and uniform and in proportion to value, except with respect to such property as the legislature might by a two-thirds vote exempt from taxation. The legislature was authorized to impose taxes on incomes, professions, occupations, or trades other than agricultural or mechanical pursuits,[a] and among its earliest acts provided extensive systems of occupation and income taxation.

A liberal legislative policy toward capital employed in railroad development was introduced with the beginning of railroad construction in Texas. This was evidenced when the railroads began operation, by the State's offer in 1854 to donate 16 sections of state land for every mile of railroad theretofore or within ten years thereafter constructed, provided, however, that a terminus of each road availing itself of this offer was fixed at some point on the Gulf coast,[b] and during the next twenty years other inducements such as broad charters, state financial aid,[c] commutation of, and even exemption from, all taxation for limited periods were granted railroads.[d]

The system of occupation taxes was extended to railroads in 1879[e] in the form of a state tax of 1 per cent upon gross receipts from all passenger travel within the State. Its scope was extended in 1905 so as to include the taxation of gross receipts from all sources, and if railroad lines lay partly in another State, the tax

[a] Constitution of 1845, Art. VII, sec. 27.
[b] Laws, 1854, act of Jan. 30.
[c] Special Laws, 1871, chap. 272; Special Laws 1870, chap. 54.
[d] Special Laws 1875, chap. 49; Special Laws 1870, chap. 54.
[e] Laws 1879, p. 143 et seq.

was based on the proportion of gross receipts which the length of the line in the State bore to its whole length. Practically all of the important railroads contested the collection of this tax and after extended litigation the United States Supreme Court declared it unconstitutional.[a]

On the date of enactment of the act providing for the tax on gross receipts,[b] railroads were made subject to a tax on intangible assets, the payment of which relieved any such company from the payment of the tax on its gross receipts.[c] This law provided for the assessment of intangible assets by a state board and according to a method [c] which in effect defeated the purpose of equalizing the tangible property at the percentage of full value at which the general mass of property in the State was equalized. This was done by deducting from the entire value the amount of the valuation at which the tangible property actually was taxed, and since it usually was taxed at 50 per cent of full value [d] this method resulted in taxing the remaining 50 per cent with the intangible assets.

The first valuation made according to the above described method was in 1906, and according to the act as then in effect [c] it was certified to the various counties. In some counties the valuation as certified was so reduced that the state board in its first annual report complained as follows:

"To find that of the more than 161 millions of dollars worth of intangible assets certified by the state tax board to the assessors

[a] The lines of railroads concerned in the case in question, the court declared, "are wholly within the State, but they connect with other lines, and a part, in some instances much the larger part, of their gross receipts is derived from the carriage of passengers and freight coming from or destined to points without the State. * * * By whatever name the exaction may be called, if it amounts to no more than the ordinary tax upon property or a just equivalent therefor, ascertained by reference thereto, it is not open to attack as inconsistent with the Constitution. * * * We are of opinion that the statute levying this tax does amount to an attempt to regulate commerce among the States. * * * We rather infer from the judgment of the state court and from the argument on behalf of the State that another tax on the property of the railroad is upon a valuation of that property taken as a going concern. This is merely an effort to reach the gross receipts, not even disguised by the name of an occupation tax, and in no way helped by the words 'equal to.' Of course, it does not matter that the plaintiffs in error are domestic corporations or that the tax embraces indiscriminately gross receipts from commerce within as well as outside of the State." Galveston, Harrisburg & San Antonio Ry. Co. *v.* Texas, 210 U. S., 217 (1908).

[b] Laws 1905, chap. 141.

[c] Ibid., chap. 146.

[d] First Annual Report of the Tax Commissioner, 1906, p. 6.

* * * less than $32,000,000 * * * found their way to the tax rolls, largely through the action of the commissioners' court sitting as a board of equalization, is, to put it mildly, discouraging." [a]

In counties where the intangible values as certified were not reduced by county equalization to the ratio of locally assessed property, the courts enjoined collection,[b] while assessments below such ratio were approved. In an effort to prevent too high an assessment by the state board and too low an assessment by the county, the act, in 1907,[c] was amended so that the board no longer is required to consider the value of the tangible property as found by the county for taxation purposes, and the county can not now reduce the value of intangible assets as certified to it by the state board.

Franchise Assessments.

General property tax assessment of the franchise of public-service corporations by local officials, as a separate item, has not been favored by the courts, as the statutes require only that consideration be given to all rights and privileges in fixing the value of real property for state and county taxation.[d] Thus a separate assessment by the county officials against a railroad company, described as the assessment of intangible property, consisting of rights, privileges, immunities, contracts, good will, and franchises to do business carried on by it as a common carrier, was held invalid. The court suggested in this case that it would be proper to include such value in the assessment of the real property, but that the description in question was too indefinite to conform to the items specifically set out in the statutes. The court was of the opinion that if the attempted assessment described any franchises at all, it was merely the right of corporate existence for which every railroad pays a charter fee and an annual tax proportionate to the amount of its capital stock.[e] Similar in effect was a decision respecting a franchise assessment added by the county officials to the property assessment of a telephone company. The court said if the property was assessed at its full and true value, to tax its existence, granted by charters for which it had been com-

[a] First Annual Report of the Tax Commissioner, 1906, p. 9.

[b] M. K. & T. of Texas *v.* Kone, 122 S. W. Rep., 424 (Civ. App., 1909); Lively *v.* M. K. & T. of Texas, 102 Tex., 545 (1909).

[c] Laws 1907, spec. sess., chap. 17.

[d] Rev. Stats., art. 7504.

[e] State of Texas *v.* Austin & N. W. R. Co., 94 Tex., 530 (1901).

pelled to pay, would be double taxation.[a] However, a separate franchise assessment for municipal taxation was sustained, because it was made under special charter provisions authorizing municipal taxes upon the roadbed, rights, franchises, and all other property of street railroads.[b] A municipal assessment under the description, "the company franchise" was held to be too indefinite, though the court said that the franchises of a corporation exercised and enjoyed by it in a city, are property, within the provisions of the city's charter requiring a tax on all property in it.[c]

Intangible Assets.

The assessment of intangible assets in Texas in some particulars is similar to the assessment of corporate excess in other States. The state board in 1914 valued for this purpose 90 railroad companies, one bridge company, and two ferry companies. Fifty-two railroads, with a total length of nearly 13,000 miles and a physical valuation of $277,000,000, were found to have an aggregate true valuation of about $440,000,000, or an intangible value in Texas of approximately $163,000,000. Bridge and ferry companies were determined to have an aggregate true value of $194,000, an aggregate physical value of $100,000, and an aggregate intangible value of $94,000.[d]

Undervaluation.

In connection with that part of the duties of the state board which requires it to aid in the enforcement of the revenue laws of the State, the state tax commissioner reported,[e] that during 1913 his office made a special effort to have county officials secure an adequate assessment of the property of public utility corporations. For this purpose the tax commissioner furnished county assessors with suggestions and with copies of reports made to the secretary of state by street railway, gas, light, power, water, and sewage companies in towns of 2,500 population showing the amount of capital stock, of bonded indebtedness, the value of tangible property, of credits, etc. It is said, that while this information led to a marked increase in some assessments, it still appeared that the average assessed value of the property of these classes of companies was only about 23½ per cent of the face value of their stocks

[a] Southwestern Tel. & Tel. Co. *v.* Meerscheidt, 65 S. W. Rep., 381 (Civ. App., 1901)
[b] City of Dallas *v.* Dallas Consolidated Electric Street Ry., 95 Tex., 268 (1902).
[c] Southwestern Tel. & Tel. Co. *v.* City of San Antonio, 32 Tex. Civ. App., 101 (1903).
[d] Sixth Report of the Tax Commissioner, 1914, pp. 3, 4.
[e] Fifth Report of the Tax Commissioner, 1913, pp. 7, 8.

and bonds, though the assessed value of the property was almost 65 per cent of the value of the tangible property as estimated by them.[a]

Another effort to secure the assessment of property at its proper valuation is evidenced by the following resolution addressed to county assessors by the state board in 1914:

WHEREAS, in a great many counties in this State the assessed value of property for taxation for 1913 was grossly under the reasonable cash market value thereof and so far below its true value as to indicate a flagrant violation of the law governing the assessment of property for taxation; and

* * * * * * *

WHEREAS, the systematic and gross undervaluation of property for assessment for taxation in any county works an injustice and hardship upon the counties where property is fairly assessed in accordance with law:

Therefore, be it resolved, by the state tax board, that said board will do all it legitimately can to enforce the law governing the rendition and assessment of property for taxation and will report to the attorney general of the State of Texas any case of flagrant violation of said law which may come to the knowledge of said board during the year 1914, in order that suit may be brought by the attorney general against such officer or officers so offending * * *.

Taxation of Credits.

The present law permitting the deduction of interest-bearing debts from interest-bearing credits is not only a favorite loophole for the intangible property owner, but is also a discrimination in favor of the creditor class, as viewed by one writer. The creditor, or the mortgagee, is able to shift the tax on mortgages to the debtor through a high interest rate or through devious methods; and as the taxes which are shifted to the creditor are offset by the taxes which he shifts to others, and as the taxes on the excess of his credits over his debts are also shifted through a higher interest rate, the result, according to this writer, is that the creditor escapes taxation on his credits. The debtor, however, who has no offset has no relief. He is taxed on his mortgaged property and pays also through a higher interest rate the tax on the mortgage. Whether the law should be remedied by exemption or by a lower rate on intangibles than on tangible property or by an income tax,

[a] Fifth Report of the Tax Commissioner, 1913, pp. 9, 74.

can not, according to this writer, be answered until all conditions have been examined.[a]

Needed Change in Tax System.

The governor in his message to the 1913 legislature calls attention to the inequality in taxation which exists between the counties, as follows: "It is simply out of the question to get at uniformly fair valuations of property for state purposes with 245 separate assessors appraising it according to local needs and local influences and with 245 separate boards to equalize the values." Writing on the same subject, the tax commissioner states that investigation will show that for the past five years the total state tax for both general state revenue and general school purposes paid by many counties is very much less than the apportionment of the state school fund thereto. The tax commissioner also gives as his opinion, based on a study of tax systems of other States, that the best systems of taxation provide for centralized administration by selected permanent state tax commissions with power to equalize valuations as between counties and between different classes of property within counties, and that in the States having such systems the members of the commission are not composed of heads of other departments of the government, but are charged solely with the duty of administering the revenue laws of the State, and are provided with ample funds for that purpose.

No action was taken by the 1913 legislature on a recommendation of the tax commissioner for a special tax commission to be appointed for the purpose of investigating and recommending a system which would (*a*) secure, as far as possible, the return and assessment of all property liable to taxation in the State, giving special attention to the method of assessing intangible property, such as money, credits, stocks, and bonds, and (*b*) secure uniformity in valuation and assessment of all property in the State liable to taxation.

Another recommendation to the same session of the legislature by the governor[b] proposed an amendment to the constitution which would permit the separation of sources of revenue and by this means remedy the inequalities of assessments between the counties, but the legislature failed to submit such an amendment.

[a] Some Tax Needs of Texas, Dr. E. T. Miller, Bulletin of the University of Texas, No. 236, June 22, 1912.

[b] Message of Governor to the 1913 Session of the Legislature.

Bibliography.

The following is a list of the more important publications, in addition to the constitution, the statutes, and the court reports, of value in the study or corporate taxation in Texas:

Message of the Governor, 1913.

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Report of Texas Tax Commission, 1899.

Annual Report of Comptroller of Public Accounts, 1912.

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